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Barry Finlay - new President of the Law Society

Barry Finlay became President of the Law Society on 26 November 2008.

Educated at Annadale Grammar School, he was admitted as a solicitor in Northern Ireland in 1978 (and in the Republic of Ireland in 1997), having graduated in law from Queen’s University Belfast and completed his training at the Institute of Professional Legal Studies.

He is a senior partner at the firm of Murlands Solicitors in Downpatrick specialising in property law, commercial litigation and arbitration. He has been a member of the Law Society Council since 1998 and has chaired the Society’s Ethics and Guidance Committee and Professional Indemnity Risk Management and Financial Services Committees.

Below we carry an extract from Barry’s address to the Society’s Annual Dinner held at the Europa Hotel Belfast on 28 November.

“As I begin my term in office as the President of the Society, I am mindful that we are living in an age of great uncertainty, transition and change within our profession.

“The uncertainty brought about by an economic downturn is placing increased pressures on the futures of many solicitors and their practices. We are also experiencing transition from old structures and inherited ways of practising law to new and often challenging frameworks in which solicitors now have to operate. More so than ever before, solicitors are under increased public scrutiny and demands for change.

“However, the reality is that these uncertainties, challenges and changes are not new to the Society nor indeed this profession. Amid all of the economic, political and social turmoil, the constant in the history of the Society and our members has been our ability to embrace the uncertainties, challenges and changes ahead.

“Few could question that the Society has guided the profession through many difficult and uncertain periods nor that significant progress has been made to date. Since its establishment in 1922, the Society has maintained its true and steady purpose:

To regulate, to represent and to promote the solicitors’ profession in Northern Ireland.

“This will continue to be our primary goal under my Presidency.

“Under my Presidency, the Society will continue to advocate on behalf of our members on those issues of concern affecting the profession. We will continue to seek to influence those in Government who make decisions which ultimately affect all our members. We will continue to challenge those decisions, from whatever quarter, which we feel adversely affect our members. We will on every occasion seek to ensure that public perceptions of solicitors are shaped not by the actions of a small minority but by the invaluable work provided by the majority of our members. The Society remains steadfastly committed to these goals.

“These aren’t mere platitudes to give cold comfort to members during difficult times. I can assure members that the reality is that over the course of the last year the Presidential team, the Council and its committees, the Chief Executive and the Senior Management Team have been actively engaged in working for our members.

“In addition to Council members, we have assistance from our coterie of past presidents, who continue to give of their time and energies on behalf of the profession. This has included ensuring that the Society’s position in respect of the implementation of the Bain Recommendations is fully acknowledged and that outstanding issues are resolved.

“The Presidential team and Chief Executive have met with the Legal Services Commission, the Court Service and the David Hanson, Minister for the Court Service, to ensure that legal aid funding is secure in the current financial year.

“The Society is still involved in ongoing discussions with the Ministry of Justice, the Court Service and the Bar in respect of solicitor advocacy.

“We continue to be actively involved in lobbying Ministers from the Northern Ireland Assembly in relation to the downturn in the economy and its effects on our members and their support staff.

“The Society remains committed to anticipating and meeting the requirements of the Bain
Recommendations with our investment in developing and implementing the Client Communication Practice Regulations which came into effect in September 2008.

“This is just a mere snapshot of the ongoing work which the Society undertakes on behalf of our members which is often unseen and unheard. However, it’s not the only thing.

“The Society continues to invest in the future with a commitment to a new Law Society House which will provide all members with access to 21st Century information technology and business facilities in the heart of the legal district of Belfast.

“We remain committed to improving our communications with our members with the appointment of a communications officer and the development of a new interactive and members based Society website which will be launched in 2009.

“During my presidency, the Society will be targeting its communications to members, to reach all segments of the profession, whether they are a sole practitioner or work in a large law firm. I encourage all members to contact me with their questions or concerns and I shall endeavour to address the issues.

“We recognise that a solicitor’s time is a valuable commodity and there is not the time these days to sift through information sent to us to determine which parts are relevant to our interests and areas of practice.

“The Society will aim to make that process easier for solicitors by providing information in a manner that is targeted to their needs and interests through our new website and continued use of our e-zine, E-former. This will enable us to better tailor our services to meet the needs of our diverse membership now, and more importantly, for the future.

“The Society recognises that the restoration of a devolved Northern Ireland Assembly and the proposed devolution of justice presents significant challenges and opportunities for the Society and our members. It is therefore critically important that the Society is at the centre of any debate, informing policy makers about the issues affecting our members and shaping the future direction of law reform.

“The Society remains committed to the ongoing training, education and admission of solicitors in Northern Ireland with a new accredited course at Magee Campus, an increase in places for trainees to 148 and despite rumours to the contrary, an increase in the number of members putting themselves forward as Masters.

“As the new President of the Law Society and a practising solicitor I fully recognise that times are difficult for members. To that end the Society will over the coming months introduce a series of initiatives to assist practitioners in coping with the economic downturn, including hosting a series of seminars in the New Year which will provide advice on how to cope with reduced income and how to generate new income streams.

“It is however, important that during this period of economic uncertainty that the Society keeps focused on the work in hand and that our members provide their clients with the best possible service. This I am confident will continue to be the case.

“The Law Society represents a very diverse membership. Our members practice law in a vast number of differing fields and in a large variety of workplaces ranging from sole practices, to large firms to corporations and government.

“This makes the Society’s role particularly challenging and promotes the need for us to focus our attention and resources strategically to ensure we deliver on the diverse needs and expectations of all our members.

“Under my Presidency I will work to ensure that the Society remains as a relevant and effective voice for the profession, cognisant of the views and concerns of our members, supportive of its needs and unified in its purpose to continue to represent, regulate and promote the solicitor profession.

“There is much to do in the coming year and I look forward to doing my best to serve all of the membership in that time. ”

The new Presidential team: Norville Connolly, Junior Vice-President; Barry Finlay, President and Senior Vice-President, Donald Eakin.
News in brief

■ APPOINTMENT OF OLDER PEOPLE’S ADVOCATE

The Office of the First Minister and Deputy First Minister has announced the appointment of Dame Joan Harbison as the Older People’s Advocate, with effect from 1 December 2008. The appointment is an interim measure pending the establishment and appointment of a Commissioner for Older People.

It is intended that Dame Joan will help government to identify and address the current problems faced by all older people and also provide independent advice on what needs to be done, based on her extensive experience of working with older people and the many age sector organisations.

■ CHANGING CONTRACTS OF EMPLOYMENT

The Labour Relations Agency has published a new Advisory Guide which is intended to give general advice and guidance about the main legal considerations which may arise when employers or employees wish to make changes to the contract of employment.

The first section of the Guide provides information on what a contract of employment is and the various terms associated with it. The remainder of the guide provides information and advice on the various ways that changes can be made to a contract of employment. For further information see www.fra.org.uk

■ AGENCY WORKERS

All agency workers, regardless of their length of contract, are now entitled to receive Statutory Sick Pay by virtue of the Fixed-term Employees (Prevention of Less Favourable Treatment) (Amendment) (No. 2) Regulations (NI) 2008, which came into operation on 27 October 2008.

The change in the law follows a recent decision of the English Court of Appeal (HM Revenue and Customs v Thorn Baker) which ruled that, as the law stood, agency workers on contracts of three months or less are not entitled to receive Statutory Sick Pay. The new legislation has been passed in order to restore the original policy intention of treating all workers the same way in relation to statutory payments regardless of the length of their contract.

■ EU UPDATE

Practitioners wishing to be kept informed of legislative developments in the European Union affecting lawyers and their clients should subscribe to “Brussels Agenda” - the free monthly e-newsletter of the Office of the Joint Law Societies in Brussels. To obtain a copy directly email brussels@lawsoociety.org.uk

Members can also subscribe to regular updates on Civil litigation; Company law and financial services; Consumer law; Criminal law; Employment law; Environmental law; Family law; Intellectual Property; Taxation; and the monthly developments from the European Court of Justice.

■ GUIDANCE FOR PROVIDERS OF GOODS FACILITIES AND SERVICES

The Equality Commission has launched new guidance on The Equality Act (Sexual Orientation) Regulations (NI) 2006. The Act, which places duties upon the providers of goods, facilities and services, provides protection for individuals on grounds of sexual orientation.


It offers clear advice on how the provisions work from a range of perspectives; it includes examples to illustrate the principles and concepts used in the legislation; and it also offers advice to individuals on what to do if they feel that they are being discriminated against on the ground of sexual orientation.

A copy of the guidance can be obtained from the Equality Commission on (028) 90 890 890 or by accessing it from the Commission’s website at www.equalityni.org

■ PARKING TICKETS

Over 140,000 parking tickets have been issued to illegally parked vehicles across Northern Ireland in the second year of the current parking enforcement contract.

This represents a decrease of approx 20,000 tickets from the first year of operation.

There were 142,754 tickets issued in the second year, from November 2007 - November 2008, which represents a weekly average of 2,745 and a daily average, Monday to Saturday, of 457. In year one the number of tickets issued was 163,500.

■ PLANNING IN RURAL AREAS

The Northern Ireland Executive has approved new planning guidelines that will both protect the rural environment and provide a boost for the building trade which has been under enormous pressure for some time.

Planning Policy Statement (PPS) 14 will replace PPS 1 and remove some of the restrictions imposed by Direct Rule Ministers. The new policy will allow some planning applications previously recommended for refusal under PPS 14 to be reversed.

Further details can be found on the website of the Planning Service at www.planningni.gov.uk

■ NIHRC ANNUAL REPORT

The ninth Annual report of the Northern Ireland Human Rights Commission was presented to Parliament on 8 December 2008. The Report shows how the Commission performed its functions during the period 1 April 2007 to 31 March 2008 through its work in casework, policy, investigations, information and education.

During the past year, much of the Commissions’ work has focused on developing advice to Government on a Bill of Rights for Northern Ireland. This was presented to the Secretary of State on 10 December 2008 marking the 50th anniversary of the Universal Declaration of Human Rights. The Commission also responded to the examination by the United Nations on children’s rights, language rights and discrimination against women.

The Report is available for download from the Commission’s website at www.nihrc.org
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For a free consultation/quotation or further information contact;

**Gary Millar at GMA**
Pinetree Lodge, 40 Tullyhubbert Road, Ballygowan, Newtowrards, BT23 6LZ
Tel: 028 9752 8427 Mobile: 07831 530178 Fax: 028 9752 1256 Email: gary@gmass.com
Practising Certificate reminder

By the time you read this you should have received the Application Form (PCR1) to facilitate the renewal of your Practising Certificate. The covering letter which accompanied the PCR1 emphasised the importance of correct completion and timely return of the form to the Society. You are reminded again that all forms must be returned not later than 5 January 2009.

As regards correct completion, please bear in mind:

(a) The responsibility for proper completion and return of the form lies with the individual applicant solicitor (ie not the firm or employer)

(b) The application must bear the personal signature of the applicant, and be both signed and dated

(c) The application must be accompanied by the correct remittance. By way of reminder, the Practising Certificate Fee for 2009/2010 is £1150.00. The prescribed Compensation Fund contribution applicable to the applicant is also calculated and shown on the PCR1. For 2009/2010 the relevant full-contribution is £600.00 (payable by solicitors with more than six Practising Certificates since admission); the half-contribution is £300.00 (payable by solicitors receiving their fourth, fifth or sixth Practising Certificate) and a Nil contribution is levied in accordance with the relevant statutory provisions on solicitors receiving their first, second or third Practising Certificate following admission.

(d) For solicitors in private practice the Practising Certificate Application Form must be accompanied by the correct and original Professional Indemnity Insurance Certificate. It is common for the Form to arrive with the Society with no Insurance Certificate, with a photocopy of an Insurance Certificate, or with the wrong Insurance Certificate. In respect of each solicitor a Schedule will have been provided by the Society broker (MARSH) which clearly identifies itself in these terms: “(NB: This schedule should be forwarded to the Law Society as evidence of insurance)”. (e) The Society is particularly keen to optimise communication with members by e-mail. You can fill in details of your email address at Part A (ii) of the application form. Please update as required or if you have not previously done so, please actively consider providing these details.

The Society is appreciative of your co-operation and attention in all these respects.

ALAN HUNTER
Registrar

CPD reminder

As we enter the Christmas party season, CPD is probably the last thing on most people’s minds. However, the CPD year is once again coming to an end, and this is a reminder for those who have not yet completed and sent your CPD Record Card to the Society.

It is compulsory for every solicitor who currently holds a Practising Certificate to complete 15 hours of CPD and to send the completed Record Card to the Society. There are some exceptions to this, such as those solicitors who will have worked less than 200 hours by the end of the year, or those who are retiring before the end of 2008. Other exemptions are given on page 3 of the green 2008 CPD Record Card.

The completed Record Cards should be sent to the Society with all relevant sections filled in. We would ask that you do not include certificates of attendance at events, as this generates a huge amount of paper to be stored within the Society. However, each solicitor should retain these attendance records on file until the end of 2009 as you may be asked to provide these as evidence.

There are several CPD events already scheduled for the New Year. If you would like further details or to book a place on one of these, please check the Society’s website – www.lawsocon.org - or contact Susan Duffy on the number below.

Finally, thanks to all of you who have already sent in your 2008 Record Card. Receiving a percentage of the cards before the holiday period means that we can begin processing the cards much earlier.

If you have any queries about CPD, please contact Susan Duffy at the Law Society on 028 9023 1614 or via email at susan.duffy@lawsoc-ni.org

Thank you for your continued support of Law Society CPD events during 2008. Have a wonderful Christmas and we look forward to seeing you all at the Society’s CPD events in 2009.
Surviving the crunch: the essential top 10 tips

Simon Bull

Introduction

The recent economic events have been described by some commentators as the greatest challenge to the global economy for 80 years. Ireland is already “in recession” and the UK will officially enter recession within the coming months.

However, for the legal profession within Northern Ireland the downturn has been well underway for over a year. Conveyancing and associated work began to contract immediately after the property boom reached its peak in August 2007. Since then house prices across Northern Ireland have fallen by 9% and the number of houses being sold has halved (source: Bank of Ireland). This has had a significant impact on legal firms dependent on residential conveyancing.

The reliance on construction in the Northern Ireland economy in relation to both economic regeneration and the “housing boom” has meant that the impact of the downturn has spread to the retail and services sectors.

According to the Ulster Bank’s Quarterly Economic Review unemployment is anticipated to double and economic output is only anticipated to begin to recover in 2010.

It can therefore be expected that as the economy contracts and credit available to businesses remains scarce, legal firms reliant on commercial and property activities will also remain under pressure for some foreseeable time.

Within such an environment it is more important than ever that legal practices (and all businesses) take a proactive approach to challenges faced and plan effectively.

Simon Bull, of business advisory specialists FGS McClure Watters, has provided his “Top 10 Tips” for surviving the credit crunch which he believes are essential to any firm’s survival plans.

Cash is king

Cash will be at the top of everyone’s list when it comes to battling the credit crunch. In good times it was tempting to focus on chargeable activities and let cash management slip. However, as profitability falls and credit becomes more expensive cash is truly “king”.

It is essential to refocus on the management of cash resources. Payment terms should appear on the face of invoices and clients should be contacted prior to credit terms expiring to ensure payment is received on time. Recurring clients may have become familiar with longer credit terms and you may have to “re-educate” them into the habit of paying on time.

Ensure your accounting system can provide timely and accurate debtor reporting so that outstanding debt can be identified, addressed and its impact on cash requirements managed.

In talking to new clients their ability to pay on time should be taken into consideration in providing an estimate of fees and in accepting their instruction. Cash flow should be the priority over turnover. In this regard, even large, potentially profitable, projects should be evaluated on the basis of the pressure they may place on cash flow. Discuss with clients the possibility of raising interim fees and keep them aware of costs as they are incurred so that, on issuing a final fee no challenge will be raised that may delay payment.

Cash forecasts

Forecasting may not have been something required in the past but as cash is squeezed forecasting cashflow is essential.

Ideally you should prepare a forecast from “the bottom up” looking at essential outlays such as rent, utilities, and salaries, subdivided into weekly, monthly, and quarterly outlays. Then look at other more discretionary costs. By considering such costs from the bottom up and then comparing them against previous years, the extent of some variances will be surprising and areas of potential cost savings can be identified.

Once total costs have been forecast, look at income. Again work from “a blank sheet” and, in discussion with your partners and solicitors, establish what is realistic.

Work a number of different scenarios through your forecast:

• what is your breakeven point?
• what if turnover falls by 10%, 25%, or 50%?
• what if debtor days increase or are reduced significantly?

Establish some key assumptions for your forecast based on these considerations and from these build up a business strategy.

Once your forecast has been established revise it regularly to take account of actual performance. You may find that the assumptions you made in your original forecast are questionable or under threat and your business strategy needs revised. If so, act early and decisively.

Consider merger/acquisition opportunities

In difficult times, with mounting challenges, a business combination may be an attractive option.
Overheads may be saved if premises and services can be shared and provide greater opportunities of “economies of scale” for the combined firm.

An acquisition of a smaller specialised firm operating within an area considered “recession proof” may allow your firm immediate access to a niche where previously it had little expertise and lessen the exposure of other services more vulnerable to recession.

While potentially beneficial a merger must however be approached carefully. The perceived savings and economies of scale may not have an immediate impact, while some costs, such as IT and marketing, may initially increase. There may be a clash of “cultures” and it will always be worth investing in some element of due diligence review to consider if the businesses, and people, will fit together successfully.

**Cut costs**

It should be obvious! If you want to maintain profitability and improve cash flow then reduce costs and outlays. However, getting the balance right can be difficult. Some costs may have escalated without being properly challenged and these can be identified in preparing your budget and brought back under control. Other costs may prove more difficult to reduce and if cost cutting becomes a pre-occupation of senior management it can become counter-productive, distracting key business generators and potentially demoralising team morale.

If you have prepared your forecast effectively, you will know what you can afford to spend and what you need to spend to maintain the business. If not already in place introduce simple procedures for staff for cost authorisation so that everyone knows what will justify expenditure.

Look to re-negotiate leases on capital equipment, and potentially on your premises, and re-evaluate all planned major capital expenditure.

Finally, wages and salaries will form a significant portion of your outlays, and regrettably you may have to consider redundancies. However, this is one area where you should not be a hostage to your forecast and you should consider the longer term in equal measure. Look to retain talent that you have invested in and which will be costly to replace. Ensure the staff that remain are re-motivated and consider introducing staff rewards and remuneration that are cost efficient such as flexible working, part time or job sharing, additional holidays, pension benefits, and childcare vouchers.

**Talk to your bank**

If you can foresee cash becoming critical then it is essential you speak to your bank well in advance. Your plight may receive a more accommodating reception if you go prepared with a plan rather than contacting the bank in a crisis situation when it may be too late to act.

Your forecast will identify occasions when cash is under pressure. Bring this to the attention of the bank so that this can be accommodated and demonstrate that your cash position will recover.

**Diversify or streamline**

There is conflicting advice as to the best strategy in difficult times. Sticking to what you are good at will play to your strengths and make forecasting the months ahead easier. However, what if your core activities are vulnerable?

In such circumstances diversifying the products you offer may become essential. Again, as with a merger strategy, look at those areas of the market that are “recession proof”. Consider the alternatives to a merger such as re-training or recruitment. If you have a solicitor who has demonstrated a proven ability to take on new challenges then this may be the time to encourage him/her to take on new areas of work. Alternatively recruiting individuals with experience in other areas could be more manageable, and cheaper, than a merger. However, this may have to be balanced with the fact that the time taken before you begin to reap significant rewards from such a strategy may be longer.

If, on the other hand, you practise within a “recession proof” area of law exploit your new found popularity. If work begins to increase consider revising your chargeable rates. If there are good solicitors within your firm, whose workload is declining, consider retraining them rather than the more expensive option of recruiting externally. Finally, you could consider giving CPD presentations in your area of expertise as other firms attempt to diversify into this area.

**Marketing and client retention**

It is tempting to cut marketing costs in order to reduce costs. However, your client base will be shrinking as activity declines and potential clients, as well as recurring clients, will be targeted by rival firms.

Research shows that firms who aggressively “go after” market share during a recession tend to emerge stronger than those who “batten down the hatches”. It may therefore be unwise to rein in marketing costs completely. Review marketing strategies and plan them into your forecast but also look at diversifying your marketing and getting more people in your firm involved.

Value for money should be your mantra. Marketing need not be full page adverts and sponsored golf days. Writing an article for a publication will cost less than advertising and get in front of potential clients. Lunch in a cafe may prove as effective as a gala dinner. Get involved in publicly sponsored workshops, and attend networking events.

Finally the most effective marketing tool to retain existing clients is to ensure good quality of service. You may find you now have more time to be with your clients. Take advantage of this to work harder for your client.

**Look for the bottom of the curve**

If you have worked through a recession before
you may be able to identify the first signs of the recovery. It is important therefore to get your business into shape to take advantage of the recovery when it arrives. Look at your internal systems, staffing levels and marketing to ensure you are best placed amongst your rivals to move with market conditions.

**Tax planning**

Income tax will significantly reduce your ability to re-invest in your business and VAT is always problematic for cash strapped businesses.

As profit falls you may be able to renegotiate with HMRC payment of income tax on account. Review your bad and doubtful debts and your recoverability under contracts (UITF 40) to ensure you have maximised tax relief available.

Reducing debtor days will reduce your overdraft financing VAT payments. Furthermore plan your variable outlays for as late in the VAT quarter as possible to reduce the period of time between payment and off-set.

**The Solitaire factor**

If the amount of Solitaire played in the office is on the increase then people need to get involved in tackling the challenges ahead. All of the areas identified above require a time input from everyone whether this is improving your quality of service, managing marketing projects, networking, writing articles, preparing CPD courses, re-training, preparing and revising forecasts, chasing cash and credit control, or planning for the recovery.

Staff may be sensitive to appearing to have little to do and therefore, finally, as an 11th tip, it may be best not to ask staff if they are busy as they invariably will say “yes”. Instead ask if they could “take on more work”. This may produce a more honest and accommodating answer.

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Simon Bull is a Manager of Assurance, Forensic and Transaction Services with FGS McClure Watters in Belfast.
Annual Dinner

The Annual Dinner of the Law Society was held in the Europa Hotel on Friday 28 November 2008. In attendance were over 165 guests with some 60 newly admitted solicitors. The Annual Dinner continues to provide an opportunity for colleagues to come together, to relax and socialise, to reminisce about the past and to discuss the future.

This year’s principal speakers were District Judge Hilary Keegan, who proposed the toast to the Society, Barry Finlay, the new President who responded and proposed the toast to the newly admitted solicitors and Conor Houston, who replied on behalf of the newly admitted solicitors.
In the last edition of The Writ there was a report on Professor Wylie’s presentation at the NI Law Commission’s first annual conference, which was held at the Studio, Belfast Waterfront Hall on Friday 3 October 2008. In this article Sarah Witchell summarises part of the talk that she gave on the meaning of ownership as it applies in Northern Ireland in comparison to the position in Scotland as outlined by Professor Kenneth Reid, Professor of Scots Law at the University of Edinburgh, in his presentation.

In a modern legal framework, arguably there should be a common denominator of understanding and the legal position should match the popular perception of ownership. In such a situation the owner/occupier of a house would be the actual legal owner; there would be no superior interest and the owner would not be accountable to anyone for payment of ground rent. Perhaps that would be the ideal but it is certainly not the current position and that aim cannot be achieved in one step.

In Northern Ireland hierarchies of title are still very common, particularly in urban and suburban areas. Pyramids of interests have been created from the mid-19th century onwards. When land was developed it was common for builders and landlords to charge an annual ground rent and impose covenants as the properties were sub-divided and sold, thereby both securing an income and retaining a degree of control over the property.

**Ground rents**

In recent years the ground rents system has come in for much criticism; it has long been considered an anachronism which has outlived its usefulness. Although steps have already been taken to prevent hierarchies of title developing further, there is still a widely held feeling that titles are basically too complicated. The Property (NI) Order 1997 has prohibited the creation of any new feu farm grants as well as long leases of dwelling houses (subject to specified exceptions, such as for flats) and the Ground Rents Act (NI) 2001 has introduced a scheme for the voluntary redemption of ground rents. However, these measures have not gone very far towards enabling home owners to acquire a simple freehold absolute interest in their property nor to enable them to acquire anything equating to actual ownership.

The Commission now has the opportunity to take a fresh look at the whole question of ground rents and the associated covenants. It is vitally important that the problems which have become apparent with the operation of the present scheme are addressed. It has been recognised that the present scheme does not provide enough incentives to householders to buy out their ground rents and does not provide them with sufficient benefit when they compete the process. It is not cost effective for solicitors to get involved on behalf of their clients and many title problems are being stored up for the future.

Although it may be possible to make improvements to and to build on the existing system, the Commission will also explore the option of developing a completely new process. In devising any new scheme it is clear that the proposals must have the support of the profession and everyone else involved in the process for it to work. In doing this, one of the most important factors to bear in mind is that any fresh scheme must not place any undue burdens on the parties, the conveyancing process or the Land Registry.

Professor Kenneth Reid also spoke at the land law reform conference and gave a very interesting presentation describing the means by which it has been possible to achieve straightforward ownership of property in Scotland. He explained that feu duties (similar to our ground rents) developed in Scotland under the feudal system. In contrast to other jurisdictions, some features of the feudal system had lingered on in Scotland until very recently and were eventually abolished by the Abolition of Feudal Tenure etc (Scotland) Act 2000.

In Northern Ireland hierarchies of title are still very common, particularly in urban and suburban areas. I have been a policy of gradually phasing out feu duties in Scotland over a number of years. The creation of any new feu duty had been prohibited since 1974 and there was a provision for compulsory redemption on sale from that date as well. Although compensation was payable by the rent owner to the rent payer, the feu duty was automatically extinguished on completion of the sale, whether or not the compensation was actually paid. Subsequently the 2000 Act finally extinguished all the feu duties that remained. In order to give everyone effected the time to put their affairs in order there was a long lead in date. The Act was passed on 3 May 2000 but the provision for abolition of feu duties did not become operative until 28 November 2004.
Instead of placing the burden on the rent payer to redeem, the 2000 Act imposed a duty on the rent owner to make a claim for compensation from the rent payer within two years of the Act becoming operative. The debt was deemed to be purely personal and the right to claim it was extinguished within a period of two years, after which it was too late to make a claim. The right did not attach to the land and could not affect anyone who acquires the land in the future because all duties have been extinguished and there can be no continuing liability.

In Scotland, the amount of compensation payable was calculated according to a formula based on the hypothetical income that would be produced if the capital was invested in consolidated stock. If the total compensation amount due was £50 or more, the former rent payer could pay by instalments. This seems to have been successful and to have worked effectively. The details of the operation of the legislation in Scotland to extinguish their equivalent of ground rents are of interest to us in thinking about possible ways forward and there may be aspects of those provisions that could be adapted for use in this jurisdiction.

Covenants

The other important matter effecting ownership of residential property that has to be addressed is the issue of the covenants which benefit the ground landlord and which continue to burden the property even after redemption of the ground rent. This is the cause of many complaints by consumers and is perhaps one of the greatest deficiencies of the present system.

It is clear that there are generally far too many types of covenant and also that there are too many doubts about enforceability of covenants. For example, on looking at the list in s 16 of the Ground Rents Act (NI) 2001 setting out the categories of covenant which survive redemption, one of the first things that might be considered is whether that list can be modified in any way. Surely there are some types of covenant which do not need to be preserved.

The question as to whether the covenants are for the benefit of the community or for the ground landlord may also be relevant. There is a stronger argument that covenants between neighbours or others in the vicinity should be retained; whereas if they merely give advantage to the owner of a superior interest who does not live nearby, then their value must be more debatable.

Surely there are some types of covenant which do not need to be preserved.

In relation to the issue of enforceability, it would be helpful if the rules were clarified and consistent. At present there is an element of uncertainty in determining the parties that are affected by the covenants and those between whom the covenants are enforceable.

The statutory criteria set out in the Ground Rents Act (NI) 2001 are exceptionally difficult to apply clearly in practice and the legislative provisions have resulted in some unintended consequences. As an illustration of this, one has only to look at the very complicated recent Land Tribunal case relating to the Cleaver areas of Malone (Hewitt and others (1) O’Neill and another (2) and Thompson (3) Reference R17/2006).

Professor Kenneth Reid again provided an interesting analysis of how similar problems have been addressed in Scotland. In that jurisdiction the concept of the real burden developed alongside the building boom of the Victorian age because it was found to be the most suitable legal mechanism for the imposition of affirmative obligations.

Real burdens were almost like a type of freehold covenant. They could be either positive or negative; could run with the land and could be combined with ownership. They had to be addressed because, with the abolition of superior interests in land, any benefits and enforcement rights had to be reassessed or removed. The policy of the reforming legislation of 2000 was to retain those burdens which still served a useful purpose, while at the same time removing enforcement rights which could no longer be justified.

Although the detailed rules were complex, the broad principle was to convert surviving real burdens into new categories of neighbour burdens, community burdens, personal burdens or facility/service maintenance burdens, as appropriate. In addition, by service and registration of a notice, superiors could preserve and reallocate enforcement rights to any land of their own provided that it contained a building used for human habitation or resort and which lay within 100 metres of the burdened property. The notice had to be registered by the superior before the appointed day, after which the right was lost and was converted into a neighbour burden.

Again, it is useful for us to see how a neighbouring jurisdiction has been able to transform an outdated and outmoded structure of obligations into a modern workable system over a relatively short period of time with the full support of all the different parties involved.

Although the two jurisdictions of Scotland and Northern Ireland have different legal systems, it is evident that they share common features and characteristics. Professor Reid was an inspiring speaker and certainly gave us all much to think about in his presentation.

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There are three distinct phases of the project to develop an e-registration facility for solicitors in Northern Ireland. Only once we have progressed through each phase and the appropriate legislation enacted can we truly say we have e-registration.

Below is a guide to each phase. Please note that the current training being offered refers only to Phase One.

Phase One: Document Creation and Online Submission
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Phase Two: Electronic Signatures and Payments
E-signatures/Authentication/E-payments/Dematerialisation

Phase Three: Paperless Registration
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WHO SHOULD ATTEND THIS TRAINING?
Solicitors, secretaries or administration staff who are involved in the completion of Land Registration Forms and Applications.

Places are limited to three people per firm.

WHEN AND WHERE WILL THE TRAINING TAKE PLACE?
‘Phase One’ training will commence in February 2009.
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About Land & Property Services
Land & Property Services (LPS) is an executive Agency within the Department of Finance and Personnel.
The background to its creation is the Review of Public Administration published in 2006. The review concluded that an integrated set of land and property related services for citizens and government would aid the regeneration and economic development of Northern Ireland. LPS is the incarnation of this.
The Agency was established initially from the merger of the Rate Collection Agency and the Valuation and Lands Agency on 1st April 2007. This was followed by the addition of Land Registers Northern Ireland and Ordnance Survey of Northern Ireland on 1 April 2008.
LPS is responsible for all mapping, land registration, valuation and rating revenue and benefits in Northern Ireland.

Further information on LPS may be obtained from its website on www.lpsni.gov.uk or by contacting LPS Marketing and Communications Team on 028 9038 8415.
The requirements of the Energy Performance Buildings (Certificates and Inspections) Regulations (NI) 2008 which introduce Energy Performance Certificates (EPCs) will extend to further categories of property from 30 December 2008. The Regulations initially applied from 30 June 2008 to the sale of existing dwellings. From 30 September 2008, they applied to newly built properties.

From 30 December 2008, the Regulations apply to rentals and to other sales and also require compliance in connection with Display Energy Certificates. The regular inspection of air-conditioning systems will be included from 4 January 2010 for larger systems and from 4 January 2011 for smaller systems. Further details and advice, including the Regulations are available on the Department of Finance and Personnel (DFP) website www.ebp.dfpni.gov.uk

As part of its enforcement responsibilities staff from DFP have been looking at the extent of compliance to date with the Regulations by those involved in the marketing of properties and to discuss issues arising. Although the DFP is satisfied to date with compliance, queries have arisen in three areas.

**Status of Recommendation Report**
Practitioners should note that the Recommendation Report accompanying an EPC is for advisory purposes only. The seller or landlord is not required to carry out work mentioned in the report as a pre-condition to a sale or renting of the property. The purpose of the Recommendation Report is to inform the prospective buyer/tenant about the energy efficiency of the property so that different buildings can be compared and informed decisions made about potential running costs.

**Penalty for breach**
The penalty for each breach of the Regulations is £200. Therefore, if 10 people ask to view a property or request information about a property (ie before any offer to purchase is made or contract entered into), the seller must supply each with a copy of the EPC. Failure to supply an EPC would in this example amount to 10 breaches of the Regulations with potential fines totalling £2000.

**Availability**
The DFP has emphasised that the Regulations provide that the EPC should be made available when a property is being marketed. Regulation 5(2) is clear on the requirement to supply an EPC free of charge “to any prospective buyer or tenant” at the earliest opportunity, before a contract to sell or rent is entered into, where information is being supplied to the prospective buyer/renter or where that person has requested to view the building. A seller or landlord who decides to supply an EPC at a later date, for example with contract and title through a solicitor, will be in breach of the Regulations.

Information on the above and other matters was issued by the Society in an Information Leaflet dated April 2008 and this is available from the home page of the Society’s website: www.lawsoc-ni.org
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Please quote this code when you call: TWR
Christmas parties and potential “risques” arising!

Introduction
The Christmas season has begun, and offices and factories all over Northern Ireland are gearing up for their seasonal celebrations. For many employees, the party is a time to kickback, enjoy a tipple and indulge in the aftermath of annual gossip.

From the employer’s perspective, the season brings with it a dilemma. That dilemma, may be answered by the recent, and timely, Northern Ireland High Court Judgement of Hunter v The Department of Regional Development (DRD) for Northern Ireland approved for handing down on 5 September 2008.

The facts
Hunter was a personal injury case in which H, an Administration Officer, was injured at the Christmas office party that she was key in organising. H sustained injuries, when on returning to her seat from the dance floor with T, another employee, T pulled away her chair causing H to fall to the ground and fracture her wrist. At the time, T was employed as a Road Service foreman.

H brought a claim against the DRD for her injuries. As they say, where there is blame - there is a claim. The High Court had to decide if the DRD were to blame for her injuries under the common law principles of vicarious liability, or if blame fell to T. To do this, the Court had therefore to assess if T’s act was committed “in the course of his employment” or if it was as a personal act.

The law
The Judgement was given by Stephens J who commenced by retracing the legal principles, as set out in the First Edition of Salmond Tort in 1907. This stated:

“A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (1) a wrongful act authorised by the master, or (2) a wrongful and unauthorised mode of doing some act authorised by the master.”

Stephens J then considered the case law that had applied this established principle. From those, he emphasised the importance of looking at “the relative closeness of the connection between the nature of the employment of the employee committing the wrongful act and the particular tort”. In other words, were T’s actions to be considered as work-related, as distinct from being a personal act? (Fleming The Law of Tort (4th Edition, 1998) p. 427).

In assessing the closeness of the connection, Stephens J was reminded to take a broad approach to the nature of the employment and not to dissect T’s tasks into its component activities. The Judgement also reviewed the more recent case of Lubia Aluminium Company Limited v Salama and Others (2003) 1 All ER 97 which stated that whilst “the close connection test focuses attention in the right direction... it affords no guidance on the type or degree of connection which... is sufficiently close to prompt the legal conclusion that the risk of the wrongful act... should fall on the employer rather than the third party...”

Finally, the Court noted that although the crucial features vary widely from one case, or type of case, to the next, essentially the Court had to evaluate each case having regard to all the circumstances, to establish if the employer was vicariously liable.

The findings
In Hunter, the Court concluded that this was a prank perpetrated by T and as such, the DRD was not liable. The Court, therefore, found that T’s act (of pulling away the chair) was an independent act and not so closely connected to his employment as to make it fair and just to hold the DRD vicariously liable. In assessing the degree of connection to the employment, the Court paid heed to the following facts about this particular Christmas office party:

• It was organised principally as an opportunity for work friends to enjoy a night out together

Other factors that may have influenced the Court include:

• A relatively modest number of DRD employees attended - in fact, more than half of the staff from that DRD office had attended

• A considerable number of persons from other organisations were also in attendance

• H had been responsible for organising the event and consulted with staff who chose the date and venue

• Staff informed the DRD as a matter of information and courtesy but did not seek approval

• All who attended paid their share of the cost

Finally, the DRD had issued an Office Memorandum to staff regarding conduct during the Christmas and New Year. This Memorandum clearly stated (and the High Court emphasised) that it applied to functions held on “official premises”. A detailed Guidance Note (issued by the Department of Finance and Personnel) was attached to the Memorandum. This Guidance set out the responsibilities of Managers at functions held on “official premises” and contained practical considerations for approving, organising or supervising social functions on “official premises”.

Commentary
This case was decided under the common law principles of vicarious liability ie whether the employer was liable in negligence for personal injuries sustained by its employee. Separate but similar, principles apply when considering the statutory test for vicarious liability under discrimination legislation. Practitioners will be aware that in relation to discrimination, Tribunals have for a long time, taken a very wide view of what is “in the course of the employment”.

However, this recent Judgement (albeit in negligence) will have to be considered in future Tribunal Decisions when the case relates to work-related social events. These events could include: office parties; client functions; work
conferences and work organised social events such as leaving parties. One could speculate that if this case had been a sex discrimination case, the office party may well have been found as an extension of the workplace. The Court noted that the crucial features vary widely from one case, or type of case, to another and that regard had to be made to all the circumstances, to establish if the employer was vicariously liable.

Anti discrimination legislation states that the employer will avoid liability if it takes such “steps as are reasonably practical to prevent the employee doing the act complained of, or for doing the acts of the description in the course of *his or her employment.” In negligence, the employer will escape liability if it is shown that there was no breach of their duty of care. If the employer organises a social event, they then face the potential consequences of acts occurring such as injuries, offensive jokes, fighting, and/or unacceptable behaviour. Ultimately, the key fact for employers is to take sufficient steps to minimise the risk of being held vicariously liable, whether under the anti discrimination laws or negligence. For those organisations who don’t want to be party poopers Table 1 set out ways to minimise the legal repercussions of holding one. ■

We are grateful to Michelle McGinley for this article, Michelle is an Employment Solicitor with the Engineering Employers Federation (NI) who regularly advises and represents organisations in employment matters.

NOTE: see also at page 49 Library Update which refers to articles, case law, further information and precedents on this issue.

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<th>Table 1</th>
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<td>Implement a work-related social events policy</td>
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<td>Invite all employees, including those absent from work</td>
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<td>Ensure employees are aware of the standards of behaviour required and</td>
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<td>Advise employees in advance that unacceptable conduct at the event can constitute gross misconduct and may lead to disciplinary action up to dismissal.</td>
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<td>Ensure that all policies (e.g. Equal Opportunities and Uingrity at Work) are current</td>
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<td>Carry out a risk assessment to identify potential health and safety hazards</td>
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<td>Ensure the venue and catering does not indirectly discriminate against employees of particular religions or beliefs</td>
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<td>Ensure the selected entertainment will not cause offence</td>
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<td>Appoint senior employees to monitor the event and advise employees of their identities</td>
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<td>Control the availability of alcohol and advise staff at the venue not to serve employees who they are concerned about</td>
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<td>Ban mistetoe!</td>
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<td>Make arrangements for transport home</td>
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<td>Deal promptly with any complaints arising from the event</td>
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In October this year the Judicial Appointments Commission (JAC) published a report of independent research commissioned by it into barriers and disincentives to judicial office in Northern Ireland. The JAC was established in June 2005 to enhance an independent process for the appointment of members of the judiciary.

At the launch of the JAC the Lord Chief Justice, Sir Brian Kerr, stated that there was a need to "identify disincentives, speak to those eligible to apply, to those who will do so in the future and to those interested in securing a robust and reflective judiciary". The JAC research was commissioned in the context of this need. It engaged Queen’s University Belfast and the Northern Ireland Statistical Research Agency to carry out the research between April 2007 and June 2008.

The research involved two stages. A survey was sent to all serving members of the judiciary and to all barristers and solicitors in Northern Ireland. In addition, consultations were arranged with a wide number of the main interest groups which make up the legal profession here and interviews and focus groups provided additional information about career planning and choices and attitudes to judicial appointments.

The NISRA research was carried out by a team led by Dr John Mallon. It was sent to 3,583 recipients and there was a response rate of 31%, higher than for similar surveys in Scotland and the Republic of Ireland. The response rate for solicitors was 31%, for barristers 26% and for judicial office holders 79% and the respondent profile matched the profile of the target population in terms of professional status, gender and community background. Some key findings are interesting.

Males were more likely than females (23% v 13%) to have applied for judicial office. There is no significant difference in overall success rates (48% males v 59% females). Protestants were more likely than catholics to have applied (22% v 16%) with little difference in the success rates (52% protestant and 49% catholic). By profession, 16% of solicitors had applied compared to 13% of barristers.

For all respondents 33% believed that being a solicitor was a negative influence on application - an opinion held by 38% of solicitors but by only 5% of barristers.

Two thirds of respondents had no prior links with the legal profession before entering it, a higher proportion of these being females. The proportions of respondents from protestant and catholic backgrounds who had no prior link to the profession were almost equal. One third of all respondents reported that they did not know enough about the work across the range of judicial offices, with males more likely (46%) than females (17%) to report an adequate knowledge and the protestant and catholic split on this was almost equal (31% v 33% respectively).

By profession, 79% of respondents already in judicial office knew enough about the whole range of work followed by barristers at 50% and solicitors at 27%. Clearly, the level of knowledge among solicitors is particularly limited. Males were more likely than females and protestants more likely than catholics to say that they would not consider applying in the future for judicial office. A large majority of respondents indicated that they would not apply unless they had far in excess of the minimum experience required.

Aspects of judicial office which potential applicants found attractive included job security, salary, pension arrangements and interesting work. Aspects which did not appeal were the isolated nature of the role (46%, the largest single factor), security considerations, increased public profile and scrutiny, the judicial establishment/culture (at 33%) and disruption to family and private life.

The research reveals a lack of knowledge among solicitors and females as to how the appointment process operates. Females were more likely to find the requirement to identify consultees to be off putting. A higher proportion of protestants than catholics found the application forms off putting. Most respondents believed that the outcome of an application would be positively affected if the applicant: was senior counsel, had higher court experience, experience as a deputy or part time judicial office holder, is a barrister, is on a government civil panel or is a prosecution counsel. Non work related positive factors were believed to be: being known to the judiciary, having the right social networks, being aged 41-50 or over 50, working in the greater Belfast area.

Different groups had varying perceptions about negative influences affecting the outcome of applications. For all respondents 33% believed that being a solicitor was a negative influence in a successful application - an opinion held by 38% of solicitors but by only 5% of barristers. 68% of females thought that being a male was a positive influence. Most respondents believed that community background would have no influence but fewer than half believed that gender would have no effect.

The NISRA research contains a great deal more information than is summarised here,
especially about the appointments process and how it might be improved to encourage more applications to judicial office. It seems that a “very substantial” proportion of the profession would consider applying for judicial office in the future, and uncovering the disincentives and barriers is valuable in indicating where and how improvements can be made.

As mentioned, the statistical research was complemented by a series of consultations with the Law Society, the Bar, educational institutions and members of the judiciary and other bodies. The aim was to explore further and complement the research findings by eliciting information about career planning and choices and attitudes to judicial appointments. This was carried out by Professor Leith and his team from the Law School at Queen’s University. The consultations found that there was no substantial divergence from the results of the NISRA research. Religion was perceived to be irrelevant as a factor in applying for judicial posts. Recent structural changes in the profession here meant that technical legal competence was spread more widely that previously assumed. Most solicitors were likely to suggest that they had the competence to carry out a judicial role although a significant number doubted that they had the skills necessary for the High Court.

There was a realisation “fuelled by appointments which would not have been expected under previous appointment regimes” that candidates without a bar-orientated background were being successful in appointments and these were seen as role models for others considering a judicial career. Solicitors and barristers working in the public sector were more positive about the JAC “competence based assessment” methodology of assessing candidates while others were more suspicious of that methodology. There is a perspective that while the JAC was being successful in opening up the lower courts and tribunals to non-traditional candidates, there is less success with High Court appointments.

Many successful solicitors were not interested in applying for judicial posts except perhaps at the end of a career in practice. Female barristers were concerned that they were being hampered in considering a legal career by the difficulty in getting work in areas which are perceived as having higher status. There was a particular concern that other women at the bar and in solicitors practices were unhelpful - that there was a lack of “sisterhood” among women to match the male social connections “on the golf course and at the rugby match”.

There was a realisation that candidates without a bar-orientated background were being successful and these were seen as role models for others considering a judicial career.

The JAC is generally viewed positively. Most of those who have experienced the application process have been happy with it. There are concerns about the assessment of technical competence and those interested in High Court posts felt that the JAC was irrelevant to the process or that it negatively affected it. The requirement to have consultees is a problem for some potential applicants. The local profession is small and word gets around fast about who has applied for a judicial post – especially a senior one. The research concluded that “there is good reason to believe that this may be a major reason for individuals deciding not to apply for posts in the first place”.

The above are some of the main findings of the consultation process. It concluded generally that the system appears to be relatively well run and well received given the short period for bedding in since the original launch in 2005. Rather than making recommendations for change, the report proceeded to outline various aspects uncovered by the research which appeared to be important in the further development of the JAC.

These are dealt with in a series of discussion points which in fact form the bulk of the University findings. The first asks about who feels most comfortable with the JAC process. It gives an interesting insight into the varied perceptions among solicitors, barristers, males and females and different sub sets of these groups - a feature which runs throughout all of the discussion points. Other discussion points dealt with include the consultation process, gender imbalance, part time judicial roles, the concept of merit (at the heart of all interviews), competences, the roles of the professional bodies (including solicitors’ firms), work experience and training in court craft.

Clearly, the JAC report has met the need identified by the Lord Chief Justice of uncovering barriers and disincentives to judicial office and is to be commended. There is also a great deal of useful information in the research documents to inform both the work of JAC in the future and for the consideration by the wider legal profession. The University research and the NISRA research together with a joint executive summary can all be found at www.nijac.org/publications/research.htm
Commercial Conveyancing Course

The Institute of Professional Legal Studies is offering a five week course in Commercial Conveyancing.

Main Facilitator: Mr Ian Huddleston – L’Estrange & Brett (supported by members of the Institute staff).

Issues covered in the course include Site Assembly, Building Contracts, Analysis of a Commercial Lease and Finance.

Time: 9.30am – 1.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast
Cost: £650

Successful completion of the course will lead to a Certificate in Commercial Conveyancing from IPLS. 15 CPD hours (including 3 Client Care/Practice Management) are awarded for attendance at this course.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast, BT9 5BY.

Closing Date for applications: FRIDAY 19 DECEMBER 2008

Applications will be taken on a first-come first-served basis (Places are limited to 30 people)

This course is designed primarily for those who have relatively little practice experience in Commercial Conveyancing.

Commercial Conveyancing Course - Booking Form

Name:
Firm:
Address:

Postcode: Telephone Number: Email:

I enclose remittance of £

COMPANY AND COMMERCIAL LAWYERS’ GROUP ANNUAL GENERAL MEETING

The Company and Commercial Lawyers; Group has pleasure in inviting its members to attend its AGM.

Date: Thursday 22 January 2009
Venue: Morrisons Bar, 21 Bedford Street, Belfast
Time: 5.30pm

The business to be discussed shall include reports on the work done by the Committee, the accounts of the Group and the election of the Committee (including Office Bearers) for the forthcoming year.

Pub Quiz
The AGM shall be followed by a pub quiz. There will be a free bar and buffet style refreshments will be provided. Teams should consist of five to seven persons. Everyone welcome!
Third party capture - call for evidence

In its Litigation Newsletter of 29 October, the Society called for evidence of insurers engaging in the practice of third party capture. This is where the insurers of a prospective defendant approach the injured party immediately following an accident, in some cases disregarding the fact a solicitor has been instructed, in others without allowing them the opportunity to seek a legal opinion or to obtain a full medical report and will make the injured party an offer in full and final settlement. The result is that cases are often under-settled as victims only discover the full extent of their injuries once a settlement has been made.

The Society would like to thank those members who have contributed to the evidence gathering process so far. If you have not yet made a submission, there is still time to do so. We are interested in those cases where insurers are providing incomplete, misleading and/or incorrect information to victims; are inappropriately discouraging victims from seeking independent representation and/or pursuing a personal injury claim; engaging in intimidatory behaviour, under-settling claims; settling claims in the absence of a medical report and without applying for a certificate of recoverable benefit from the Compensation Recovery Unit. In particular the Society is seeking evidence of cases where such settlements have subsequently been reviewed through court proceedings.

Members who have examples of cases in which clients have been the victims of any of these practices are asked to provide this evidence on or before 16 January 2009 to Colin Caughey, the Society’s Legal and Research Officer at colin.caughey@lawsoc-ni.org.

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The Society’s Conference on recent developments in High Court personal injury litigation, held at the Holiday Inn Belfast on 14 November, was a huge success, with over 150 practitioners attending from all over Northern Ireland.

The event was chaired by Mr Justice Gillen who has recently been assigned as Senior Queen’s Bench Division Judge. Welcoming the opportunity to address members of the Society, he delivered a keynote speech entitled “Personal Injuries Litigation – A Fresh Approach”, extracts from which we carry below.

The formal programme then commenced with a presentation from Cormac Fitzpatrick who closely examined the history of the Pre-Action Protocol and considered its requirements and the likely consequences thereof for litigation and the role of ADR.

Gareth Jones then highlighted a number of key elements from Practice Direction 1/2008 to include Discovery, Notice for Particulars, Remittal and inspection by engineers or other non-medical experts

Master McCorry who has played a key role in introducing and implementing these reforms delivered a detailed exposition on the provisions of Practice Direction 1/2008 relating to the review of actions before the Master and completion of the new Questionnaire.

Given the interest in the topic and the quality of the presentations, it is likely that a similar conference programme will be brought to a number of venues outside of Belfast early in the New Year. Details will be available in the next edition of The Writ.

Personal injuries litigation - a fresh approach

Extract from speech by Mr Justice Gillen

Actions at hearing
QBD actions are now on the day of hearing subjected to two callovers only. I deliberately allow negotiation for an hour after the first mention of cases at 10.15am and thereafter insist that by 11.15am, unless there is good reason or the cases are on the cusp of resolution, cases must be ready to start. This will serve to ensure that cases scheduled for one day only last that long, that witnesses are not kept hanging on interminably and that the parties have addressed the possibility of resolution prior to trial. It also tackles the growing culture of witnesses who have been directed by solicitors to attend at 9.45am but turn up at court at midday in the hope that cases have settled.

The period between 10.15am and 11.15am/11.30am on Monday to Wednesdays will now be filled by short interlocutory applications which conventionally were heard on Fridays but will now also be heard Monday-Wednesday to ensure that judicial time is appropriately allocated and well spent. This will further serve to free up Fridays for longer hearings of such matters. Consideration has also been given to a starting time of 10.00am instead of 10.15am for all Queen’s Bench actions.

Judicial case review
I review all medical negligence cases and, beginning shortly all defamation cases. These will not go before the Master but will come...

To ensure wherever possible that cases which run are heard on sequential days, I am moving to a system whereby actions will be heard Monday-Wednesday and not listed to start on a Thursday save in those cases where cases have run over until the Thursday or where there is some special reason for a Thursday date being selected. Hence cases will not be listed for the first time on a Thursday unless for some special reason.

Before me personally. A more proactive case management will therefore be in force dealing with such cases to ensure they are efficiently and expeditiously listed and heard.

Pending any changes to O25 and O18, strong judicial encouragement will be given to meetings of experts prior to the hearing (convened with the purpose of drawing up a schedule of agreed/non-agreed matters),
exchange of liability and quantum reports in medical negligence cases, scrutiny of the use of experts eg forensic accountants in circumstances where they are quite unnecessary and close consideration of attendance of doctors who are unnecessary and should have been agreed.

**Medical negligence protocol**

A new medical negligence protocol, drafted by Coghlin LJ, will soon emerge. I will be meeting with a sub-committee of the QBD Liaison Committee to discuss production of this in the very near future.

Accreditation of the profession in medical negligence cases is something which we must address. Medical negligence litigation is rife with delay and lack of expertise. I recognise that in this jurisdiction, especially in straitened financial times, it is a real issue for to suggest work being taken away from small firms who deal with everyone who walks through the door. Equally there must be a system to ensure the public are adequately served in this complex area.

**Use of experts**

Unnecessary retention and attendance of doctors, engineers and forensic accountants are regular features. The profession seems to be unaware of O62 Rule 10A which empowers the court to disallow costs of witnesses who are not reasonably necessary. I intend to ensure that this is invoked in appropriate cases. Where experts are called, any literature that they rely on must be filed with the court 14 days pre-hearing. A culture of pre-action expert meetings by telephone or otherwise should become the norm. In my reviews, I am regularly directing that live television link or telephone conferencing should be considered to ensure that experts are properly accommodated and convened.

**Evidence by television link**

Consideration should be given in appropriate cases to evidence by television link especially where witnesses are not locally based. In a recent case a number of witnesses expressed concern about such a move where they could not be present to instruct their counsel in cross examination or hear all the evidence. In certain circumstances such attendance may be necessary but in many instances the link is more than adequate and can be accommodated during the hearing.

Those who use the courts are entitled to expect more than we presently give and we as judges and professional lawyers must look afresh at our own contributions to justice.

**Rule changes**

So far as medical negligence reports are concerned, O25 must be reconsidered insofar as it excludes exchange of medical reports in medical negligence cases. It seems to me unanswerable that there should be a simultaneous exchange of liability reports and a sequential exchange of quantum reports. Similarly O18 must be amended to permit properly drafted defences which inform the plaintiff just what the case being made by the defendant is to prevent ambush or surprise.

**Legal aid**

In relation to delays in obtaining legal aid, liaison contacts have now been appointed in the various divisions in the High Court who will be able to approach members of the NILSC on a one to one basis on behalf of the judiciary to ascertain just where seemingly intractable problems are arising. It is not the role of the courts to solve these problems but at the very least the court will now be in a position to ascertain just where the fault lies when delays are occurring.

**Issue of judgments**

Judgments in High Court actions over which I preside will usually be handed down no later than 6-8 weeks at the outside unless due to complexity or other reasons, a longer period is required. Indication of the new date for the judgment will be given by me in all such instances so that parties will always have knowledge of when the case is to be finally disposed of. I emphasise that this is purely my practice and other judges may deal with the matter differently.

**The way ahead**

Thorny areas with which we must grapple remain. A few immediately spring to mind. Should the courts have authority to order experts to meet, to exchange reports, and to urge consideration of single experts? Should there be revision of the current system of lodgements and the introduction of a system of offers to settle and later payment into court? Should there be better use of skeleton arguments and written submissions either by way of openings or closings in cases to ensure time is effectively used? Should there be ADR along the lines being introduced in the Republic of Ireland?

I am sure that you all share my determination to change the culture of delay and cost wasting which has bedevilled justice in this area. I trust that we are witnessing a new spirit of co-operation and change within this area. Those who use the courts are entitled to expect more than we presently give and we as judges and professional lawyers must look afresh at our own contributions to justice.
A great night for solicitors

“A wonderful event and impressive book for solicitors, by solicitors and about solicitors. It was an honour to be invited.”

This was typical of the comments of those attending the Belfast Solicitors’ Association 65th Anniversary Dinner marking the official launch of the BSA book “Serving the City, a Celebration of Sixty Five Years of the Belfast Solicitors’ Association”, at the Culloden Hotel on Friday 17 October 2008.

The book, which was the brainchild of former Chairman, Joe Rice, charts the history of the Association from the war-torn 1940s through the years of civil unrest and into the new millennium, having originally hailed from Dundonald. She attended with her husband Andrew and Charles Jones, next year’s Liverpool President and again, originally from Belfast.

After a sumptuous meal, Janice Smyth of Blackstaff Publications along with Don Anderson and Joe Rice cut the Anniversary cake, a splendid chocolate creation prepared by Jennifer Stirling from Bangor. We then settled back to enjoy the after dinner speeches.

Anne Heseltine, the President of the Liverpool Solicitors’ Association warmly proposed the health of the BSA and remarked that it was one of the highlights of her year of office to be asked to return to this function in Northern Ireland, the 21st Century. He spoke warmly of his days in Northern Ireland mentioning the late Jack McCann, Solicitor and Albert Walmsey Resident Magistrate and he congratulated the BSA in seizing the initiative in producing the new book. He emphasised that the BSA had been no mere passive observer over the years and in serving the city through its members it had helped to shape the Belfast of the future.

After the formal parts there was an opportunity for guests to mingle and to rekindle old friendships. The backdrop of the speakers’ podium was a magnificent magnified replica of the dustcover of “Serving the City” and was the recipient of many compliments.

The occasion was unique in more that one sense in that it marked the first time that the BSA had collated its old materials to produce a book of such stature. The members of the Association were grateful for the stalwart efforts of Susan Brennan and John Guerin for all their tireless work behind the scenes.

No detail was left unattended to and thanks must be given to the Ulster Bank, the Law Society of Northern Ireland, to Gail Sergeant and Sharon of Blueprint Specialist Appointments and Gary Harkin of LexisNexis for their generous contributions which went a considerable way towards making the evening such a success.

The evening itself raised around £1,500.00 for the NSPCC from table donations.

Finally the BSA is pleased to report the preparations are well in hand for the Annual Dinner dance which is due to be held on Saturday 31 January 2009 in the Europa Hotel.
BSA - 65 years old

The book “Serving the City, A celebration of 65 years of the Association” is available at a cost of £40. To request a copy simply complete the order form below and return to:

The Administrator
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BELFAST BT1 6PJ

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Cheque enclosed amount £
Child Contact Centres celebrate decade of promoting positive contact

The Northern Ireland Network of Child Contact Centres (NINCCC) recently celebrated the 10th anniversary of Child Contact Centres across Northern Ireland with the launch of a new DVD entitled ‘Positive Contact’. The DVD highlights the invaluable service provided by Child Contact Centres in maintaining and in some cases establishing contact between children and their non-resident parents and other family members.

In 1998, Knock Child Contact Centre in Belfast and the Mid Ulster Child Contact Centre in Cookstown were launched. Today contact sessions are provided in fifteen locations across Northern Ireland. * Child Contact Centres provide a safe, friendly and neutral environment, where children of separated parents can spend time with one or both parents and sometimes other family members such as grandparents.

In the last two years, Child Contact Centres in Northern Ireland provided services for around 500 families, facilitating 6,000 family visits. This was made possible by the time and efforts of 260 trained volunteers who are vetted as suitable to work with children.

Speaking to over 200 representatives from the Court Services, legal profession, social services and other support agencies in the Dunadry Hotel in Templepatrick, Muriel Orr, Chair, Northern Ireland Network of Child Contact Centre said:

“For many families, arriving at a Contact Centre for the first time can be a very real move forward after a period of tension, anxiety and confusion for everyone involved. We are child-centred and our aim is to allow children to enjoy contact with their non resident parent, and to encourage families to move forward positively.”

Acknowledging this significant milestone, The Honourable Mr Justice Weir said: “The progress that you have made in the ten short years of your existence in Northern Ireland is truly remarkable and all those who have given and continue to give their time and energy to the Northern Ireland Network of Child Contact Centres deserve great credit and the enduring thanks of those parents and children for whom you provide an indisputable service that will benefit the children throughout their lives. You also have the gratitude of those of us who have to try daily to break down contact barriers – for us, you are a unique and invaluable resource.”

Also speaking at the event, Dr Fionnuala Leddy, Consultant Child and Adolescents Psychiatrist, The Royal Belfast Hospital for Sick Children, said: “We know that contact between children and their non-resident parent is good for children in all sorts of ways; improving self-esteem, behaviour, academic progress and social competence. In the majority of cases parents and children can work together to organise contact, often involving members of the extended family in the arrangements. However, after separation, approximately 30% of children have no contact with the non resident parent, and Contact Centres are an important addition to the range of services aimed at promoting positive contact.

There are now Contact Centres in a variety of locations across Northern Ireland, providing safe and attractive venues for contact. Without them, many non-resident parents who are trying to rekindle or build new relationships with their children find themselves trying to do so in environments where nurturing children is difficult.”

Judy Birchall, Regional Support Manager with the National Association of Child Contact Centres said: “The Northern Ireland Network of Child Contact Centres is a shining example of a network supporting, advising and encouraging its diverse membership with a commonsense "can do" attitude.”

*NOTE* Northern Ireland Child Contact Centres are located in: Armagh; Ballymena & Antrim; Carrickfergus; Belfast Central; Cloons; Coleraine & Ballycastle; Craigavon; Foyle & Limavady; Knock, East Belfast & Bangor; Mid Ulster, Cookstown & Magherafelt; Newry and Omagh – see Issue 193 (August 2008 Edition) for addresses and telephone numbers.

Pictured at the NINCCC 10th anniversary celebratory event are L-R:

Maureen Gordon, Chair, Central Belfast Child Contact Centre Management Committee; the Honourable Mr Justice Weir; Judy Birchall, Regional Support Manager, The National Association of Child Contact Centres; Lady Eames, OBE, NINCCC Adviser and Dr Fionnuala Leddy, Consultant Child and Adolescents Psychiatrist, The Royal Belfast Hospital for Sick Children.
LEGAL POSITIONS?

prg: it figures!

**Tax Solicitor**
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One of Ireland's most prestigious and dynamic corporate law firms require an experienced and professional solicitor for their tax department. The dedicated corporate tax department advises Irish and overseas companies on a broad range of corporate transactions, ranging from company acquisitions and M&O to the most complex cross border mergers and asset financings.

**Environment/Planning Solicitor**
Belfast
£45K+ benefits
With a fantastic legal reputation and a superb client base, this thriving practice is determined to appoint a high calibre Solicitor to strengthen its environmental and planning capacity. The team offers support from planning appraisals, applications and agreements, enforcement appeals, inquiries and challenges. The team's blue chip client base will provide access to high profile projects in the UK and Ireland.

**Energy Solicitor**
Belfast
£45K + benefits
A highly regarded law firm requires an Energy Solicitor for their expanding department. The role includes advising on a broad range of projects (power, gas storage, interconnectors, LNG etc) with a caseload involving downstream UK electricity, gas and coal including energy trading. This is a rare opportunity to drive your career forward surrounded by a dedicated team.

**Defence Litigation Locum**
Belfast
£30 - £40K + benefits
Large public sector organisation wishes to recruit an experienced Defence Litigation Solicitor to cover maternity leave. You will offer experience in defence litigation and be or prepare to be security cleared to CTC level. This is an ideal opportunity for a qualified solicitor either seeking to pursue a career in the public sector or seeking short to medium term options.

**Media & Entertainment Solicitor**
Belfast
£40K + benefits
A market leader with an unrivalled reputation is seeking to appoint a media lawyer. The role will entail strictly non-contentious work in association with film and TV companies as well as general media representation. The successful candidate will be open to continued professional development and training within the practice. This is a unique opportunity to break into this stimulating area of law.

**Commercial Litigation Solicitor**
Belfast
£35K + benefits
With over 100 years in practice our client is well established and now one of the largest legal practices in Northern Ireland. The ideal candidate will have experience in commercial litigation and be responsible for contractual disputes, construction and the recovery of substantial commercial debts. This is an excellent opportunity to join a dedicated and successful team.

**Corporate Solicitor**
Belfast
£40 - £50K + benefits
An award winning, top tier law firm with an international outlook has a requirement for a Corporate Solicitor with extensive experience within a corporate environment. You will be expected to maintain an existing client base, target and maintain new business whilst developing the corporate department to its full potential.

**Employment Locum**
Belfast
£37K + benefits
An exciting opportunity to join a dynamic public sector organisation. The client is wishing to recruit an Employment Solicitor ideally with extensive experience in Industrial and Fair Employment Tribunals. You will report directly to the Head of Department.

**Personal Injury Solicitor**
Co Down
£25K - £35K+ benefits
A renowned and well respected city centre firm with a strong reputation has a requirement for a Personal Injury solicitor. The successful candidate will offer at least one year PQE in Personal Injury Litigation and experience handling their own caseload. You will be working with a diverse client base, ranging from private clients and families to large institutions and companies.

**Company Solicitor (In House)**
Co Down
£Neg + benefits
One of the world’s leading manufacturing companies has a requirement for an In House Company Solicitor. The successful candidate will be likely to have experience in a commercial law firm or environment. They will be responsible for the overall management of the Group’s legal affairs. Excellent interpersonal skills together with a strong commercial outlook are key requirements.

**Pensions Solicitor (In House)**
Dublin
£Negotiable + benefits
One of Ireland’s leading consultancies is seeking a highly motivated and experienced Pensions Solicitor for their thriving department. You will have extensive post qualified experience and be responsible for managing and developing the legal work in relation to a portfolio of clients. An ideal opportunity to further your career in a challenging In House role in the southern market.

**Legal Counsel (In House)**
Dublin
£Negotiable + benefits
Major international manufacturing company is recruiting for the position of Legal Counsel based in Dublin. The post holder will be a qualified solicitor with experience either in a legal practice or In-House managing commercial agreements and legal issues. The ideal candidate will be a dynamic self starter with excellent communication skills.

If any of the above roles interest you then please call Lois Wright at PRG LawSearch on 028 90 443685 for a confidential chat or email loiswright@prglawsearch.com

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The Institute of Professional Legal Studies is offering a Seminar on the reform of Child Support.

Speaker: Gillian McGaughey
When: Tuesday, 20 January 2009
Time: 6.00pm – 9.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast
Cost: £100

The Child Support Agency has attracted considerable criticism from parents, the press and practitioners. Government responded to this public disquiet with a radical programme of reform of the child support system. This Seminar is designed to inform practitioners of the nature and scope of these reforms and their potential impact on practice.

3 CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast BT9 5BY.

Closing Date for applications: Tuesday, 6 January 2009

Contact and The Implacably Hostile Parent

The Institute of Professional Legal Studies is offering a Seminar on the law, practice and procedure in cases of implacable hostility.

Speaker: Her Honour Judge Loughran
When: 17 February 2009
Time: 6.00pm – 9.00pm
Venue: Institute of Professional Legal Studies, 10 Lennoxvale, Belfast
Cost: £100

The implacably hostile parent has become a recurrent feature of all family courts making orders for residence and contact. The courts have devised a range of strategies to deal with parents who deny contact, resist mediation and undermine the child’s relationship with the other parent. In this seminar participants will hear of the judicial approach to cases of this nature and the range of services available from experts in other disciplines.

3 CPD hours are awarded for attendance at this Seminar.

Booking form and cheques, made payable to QUEEN’S UNIVERSITY BELFAST, should be sent to Mrs Joan Playfair, Institute of Professional Legal Studies, 10 Lennoxvale, Belfast BT9 5BY.

Closing Date for applications: Tuesday, 3 February 2009

Child Support Update - Booking Form
Tuesday, 20 January 2009

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Firm:
Address:
Tel. No:
I enclose remittance of £
Email address:

Child Support Update - Booking Form
Tuesday, 20 January 2009

Name:
Firm:
Address:
Tel. No:
I enclose remittance of £
Email address:

Implacable Hostility - Booking Form
17 February 2009

Name:
Firm:
Address:
Tel. No:
I enclose remittance of £
Email address:
Solicitors (Northern Ireland) Order 1976

Daniel McGreevy, Solicitor
The Disciplinary Tribunal, sitting on 23 November 2007 ordered that Mr McGreevy, formerly practising on his own account at 60 Irish Street, Downpatrick be struck-off the Roll of Solicitors in Northern Ireland.

Killian Morgan, Solicitor
The Disciplinary Tribunal, sitting on 27 June 2008 ordered that Mr Morgan, formerly practising at Unit 2, Little Acorns, Woodhouse Street, Portadown, BT61 8NY, be restricted from practice on his own or in partnership.

Joseph P Stewart, Solicitor
The Disciplinary Tribunal, sitting on 24 October 2008 ordered that Mr Stewart, formerly practising on his own account at 39 The Square, Coalisland, latterly at 19 Riverview, Ballykelly, Limavady, and finally as an Assistant Solicitor, be struck-off the Roll of Solicitors in Northern Ireland.
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New ‘doorstep selling’ regulations, which increase consumers’ rights, came into force on 1 October 2008.

Every year, millions of ‘doorstep’ sales take place in homes across the UK. While the law has offered some legal protection for cases in which sellers turn up at consumer’s homes, without advance notice, there has previously been no protection for consumers in cases where the sales visit had been pre-arranged.

From 1 October 2008, this has changed with the introduction of the ‘Cancellation of Contracts Made in the Consumer’s Home or Place of Work Regulations 2008’ - SI 2008 No. 1816. They replace the Consumer Protection (Cancellation of Contracts Concluded Away from Business Premises) Regulations 1987, SI 1987 No. 2117.

These new regulations protect all consumers who buy products and services from traders at home, regardless of whether the sales visit was unannounced or pre-arranged.

Where the goods or services cost over £35, consumers have a seven day cooling-off period during which they can cancel the contract. Sellers must provide prospective buyers with written notice of these rights, along with a cancellation form.

The type of businesses affected include those who provide home improvements, repairs and maintenance services, as well as energy suppliers. It also covers those who sell consumer goods and homeware through door-to-door or face-to-face methods.

If traders do not comply with these requirements, any contract agreed with a customer is not legally binding. More importantly, such traders are committing an offence.

In Northern Ireland, the regulations are being enforced by the Trading Standards Service of the Department of Enterprise, Trade and Investment.
Contents of an accused’s defence statement

S 60 of the Criminal Justice and Immigration Act 2008 came into force in Northern Ireland on 3 November 2008. It amends the laws relating to pre-trial defence disclosure.

Under the Criminal Procedure and Investigations Act 1996 (the “1996 Act”), the accused is required to supply a defence statement in Crown Court cases, and has a discretion to do so in magistrates’ courts cases. S 60 amends the requirements as to the contents of a defence statement. It now requires defendants to set out, in advance, particulars of the matters of fact on which they intend to rely. The effect of the provision is to require defendants to disclose a factual narrative of their case. S 60 also amends section 11 of the 1996 Act to provide for the usual sanctions (comment and inferences) to be available for breach of these requirements.

The effect of the transitional provisions is to apply the new requirements to any case to which Part 1 of the 1996 Act applies on or after commencement. The new requirements will not apply to cases where the investigation began before 15 July 2005 (or before 4 April 2005 in respect of England and Wales). However, they will apply to cases where the investigation began after 15 July 2005 (or, as the case may be, 4 April 2005), the defendant is charged before section 60 comes into force, and the case is sent, transferred or committed to the Crown Court (or in a summary case the defendant pleads not guilty) on or after that date.

Copies of this Order SI 2712 may be found on the Office of Public Sector Information web site (www.opsi.gov.uk).

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Web: www.dermotmcnamara.ie

Dermot McNamara & Company Solicitors
A review of 2008

2008 was without doubt a very unusual year and probably one that most solicitors would prefer to forget. When the year started the high street banks had much the same line up that they had had for a generation and there were still a few estate agents around claiming that the market would turn around in the summer. By the end of 2008 those estate agents have been laid off and the banks had been effectively nationalised.

With the housing market having peaked in July 2007, most conveyancing practices have been in cold storage now for almost 18 months. Conveyancers, once a buoyant band of brothers/sisters, have turned into brooding introverts checking their client accounts on line for any signs of life.

Conveyancers, once a buoyant band of brothers/sisters, have turned into brooding introverts checking their client accounts on line for any signs of life.

So what else can 2008 be remembered for. It was a year of momentous change in the world of finance. A tsunami of debt that been building up at sea for years finally made landfall in September and swept away some of the world’s biggest financial institutions.

It was the year when the National Debt Clock in New York ran out of digits to show the spiralling figure. The clock has had extra digits added in order to show what is now apparently a quadrillion dollars of American debt. The last time anyone saw figures like these was in the final days of the Weimar Republic.

The housing market in Northern Ireland has been hit particularly hard. Because the increases it had experienced in 2006/07 had been so dramatic, our fall from grace has been all the more painful. The size of our public sector means that many people consider themselves and their jobs to be recession proof. The problem for the legal profession is that not too many solicitors work in the public sector.

As a result 2008 was the year when the ‘R’ word that people were afraid to mention started off meaning recession and ended up meaning redundancy. For many solicitors and apprentices redundancy was no longer something to advise a client about but became the reason why AB hasn’t been seen in court recently.

But the year did have its lighter moments. It was the year when Quinn Insurance was fined €3.25 million by the Republic’s Financial Regulator for company irregularities.

Now at the start of 2009 there is an inevitable temptation to engage in predictions. It is a temptation I will have to resist. The future as economists say is an uncertain place. What is more surprising is the fact that the past is also apparently an uncertain place. Most commentators have yet to agree on the cause of the banking collapse, never mid the prospects for recovery.

With so much divergence of opinion about, you would be reluctant to engage in predictions about the future. For many solicitors the fall in the housing market has come on top of the loss of huge amounts of litigation to third party capture and Quinn Direct amongst others.

The future unfortunately is an uncertain place for quite a few of us. Did I mention that Quinn Insurance was fined €3.25 million? I did. Still it gets better every time.

We are grateful to Michael Flanagan, Solicitor, Belfast, for this article.
Need a Drink?

If you are relying on alcohol to make you feel better after a difficult day, you may find that the days just become more and more difficult.

If you are wondering whether you need to cut down on your drinking, if you are feeling guilty about your drinking, or if people are commenting, you can call us for free and completely confidential advice.

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Ever dreamed of being the next Brian O’Driscoll, playing rugby in front of a packed stadium with a roaring crowd cheering you on?

Well now here’s your chance!

The Law Society of Scotland are inviting teams of solicitors to participate in the Lawyers’ Rugby World Cup which will be taking place in Edinburgh, Scotland on 6 – 8 May 2009.

Teams of rugby-playing lawyers from all over the world will be competing for the prize of being crowned Lawyers’ Rugby World Cup Champions of 2009.

Highlights of the World Cup will include:

• The opening reception in Parliament Square
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• Medals for winning squad
• Individual player awards
• Closing ceremony at Edinburgh Castle
• Championship dinner and party
• The chance to be Lawyers’ Rugby World Cup Champions 2009

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Set in one of the most dramatic cityscapes in the world, Edinburgh is the ideal destination for some great rugby and a weekend with friends. There’s plenty to see and do in the host city with the perfect balance between all things traditional and contemporary.

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How do you get involved?

If you are interested in participating or perhaps want to form a squad, then please contact former Ireland international rugby player – Trevor Ringland at 028 9032 9696 or Trevor.Ringland@mac-rt.com

Rules of the competition

1. Maximum of 25 players per squad.
2. Proof of registration as barrister, solicitor or member of legal profession required. (Must apply to 90% of squad).
3. Player medical certificate of health and fitness to play rugby at a competition level (dated within three months of championship) required in advance.
5. Proof of player insurance authorising the practice of rugby required in advance.
6. No professional or former professional rugby players may participate unless in exceptional circumstances.
7. The organisation of the championship and the entry fees will be determined by the number of participating teams.

Please note that registration of interest closes 31 December 2008.
Retirement dinner for Lord Justice Campbell

The Institute of Professional Legal Studies and SLS Legal Publications (NI) jointly hosted a dinner in the Great Hall at Queen’s University Belfast, to mark the retirement of the Rt Hon Lord Justice Campbell as Chairman of the Council of Legal Education (NI) and Chairman of the SLS Board of Directors and to celebrate his immense contribution to both organisations.

The warm tributes were led by The Hon Mr Justice Weir and included a message from President McAleese which noted Sir Anthony’s formidable intellectual capacity together with his compassion and care for the future of the law.

Ever conscious of the importance of the need for careful coordination between the professions and the academic world, Sir Anthony served as a deft and skilful Chairman of the Council of Legal Education (NI) for 15 years and chaired the SLS Board for 14 years. He has been a constant and generous source of inspiration, advice, guidance and good humour, always demonstrating his belief and commitment that the role of lawyer and judge should have a broader part to play in society as a whole. The genuine warmth and appreciation for such a remarkable person made this an especially memorable occasion.

“The virtue of justice consists in moderation, as regulated by wisdom” Aristotle

1. Guests enjoying the music before dinner.
2. The Hon Mr Justice Weir; Anne Fenton, Director IPLS; The Rt Hon Sir Anthony Campbell; Miriam Dudley, Director SLS; Professor Peter Gregson, Vice Chancellor, Queen’s University Belfast.
3. The Rt Hon Sir Brian Kerr, Lord Chief Justice with Professor Peter Gregson, Vice Chancellor, Queen’s University Belfast.
Immigration and citizenship

Liz Griffith, Policy Officer at Law Centre (NI), discusses some key features of the draft Immigration and Citizenship Bill 2008 and highlights some salient human rights issues.

In July 2008, the UK Border Agency published its draft Immigration and Citizenship Bill. The Bill will bring about major reform in immigration law. It is designed to consolidate and simplify the existing piecemeal structure of immigration legislation that is currently encompassed in ten distinct Acts. The Bill follows the February 2008 Green Paper, The Path to Citizenship: Next Steps in Reforming the Immigration System, and a public consultation response. Immigration is a reserved matter in Northern Ireland.

This article outlines the key proposals in the Bill and highlights specific measures that may engage the European Convention on Human Rights (ECHR) and other international human rights standards.

REDUCING RELIANCE ON DISCRETION

The Bill proposes a single immigration category, ‘protection permission’, to replace refugee status, humanitarian protection status or human rights protection status. The Bill does not appear to retain the current arrangements for grants of discretionary leave, which account for a large proportion of grants of leave resulting from asylum applications.1 Under the proposed legislation, Border Agency caseworkers will be unable to award discretionary leave in cases that, although compelling, do not fully engage the ECHR.

It is not possible to anticipate all the circumstances in which people will be affected by this legislation, but some examples include cases where:

- significant Home Office or employer error has been detrimental to the applicant
- the applicant chooses to give evidence in criminal prosecutions such as trafficking cases
- children have spent a significant portion of their formative years in the UK

EXPULSION ORDERS

The draft Bill replaces the two existing concepts of ‘administrative removal’ and ‘deportation’ with ‘expulsion orders’: a single power to expel those who do not have permission, coupled with an automatic bar on return. It also substantially increases the circumstances in which the Secretary of State of the Home Department (SSHD) can apply an expulsion order. This includes cases where a person fails to meet a condition of her/his leave, such as a failure to meet a reporting requirement or to notify the authorities of a change of address. Expulsion, in such instances, would appear to be wholly disproportionate.

Under the proposed regime of expulsion orders, the SSHD will have no statutory obligation to notify a person of the removal arrangements before starting enforcement action. This will make it much more difficult to challenge removals. This contrasts with current provisions whereby the SSHD is required to serve Removal Directions at least 72 hours before removal.

The draft Bill extends the ‘automatic deportation’ regime currently found in the UK Border Act 2007. Automatic expulsion amounts to a double punishment. This does not reflect the principle of rehabilitation, a key concept of the UK justice system (as enshrined in the 1974 Rehabilitation of Offenders (Northern Ireland) Order 1978). Any foreign criminal who receives a twelve month sentence will now face expulsion with no right of appeal unless the SSHD uses her discretion in applying a specified exemption.

The Bill does not appear to make provision to prevent the deportation of minors. As the UK has withdrawn its reservation to the Convention on the Rights of the Child relating to immigration control, we would welcome substantial redrafting to reflect this.

CRIMINAL OFFENCES

The draft Bill introduces an array of new criminal offences. This appears to be part of a growing trend to criminalise immigration matters. This approach has recently attracted criticism from the Council of Europe Commissioner for
Human Rights, Thomas Hammarberg, who denies the trend as disproportionate. He warns that it could lead to stigmatisation and marginalisation. As outlined above, a criminal conviction could result in automatic deportation.

If a refugee becomes liable to criminal proceedings, s/he may be able to rely upon a statutory defence provided in the draft Bill. However, under these provisions, such a person is deemed to have committed a crime unless s/he can demonstrate that a defence applies. The presumption of innocence enshrined in UK domestic law and a.6(2) ECHR, appears to be reversed by these provisions. The scope of the statutory defence is narrow and applies only to refugees, which gives rise to a perverse scenario whereby vulnerable persons, such as victims of trafficking, may be liable to prosecution. Where the new statutory defence is invoked, the draft Bill also makes a radical - and unjustified - departure from the current low standard of proof (i.e. a ‘reasonable likelihood’) used in asylum/human rights cases.

APPEAL RIGHTS

By limiting appeal rights, the Bill will result in a considerable reduction of judicial oversight in immigration matters. This is especially worrying given the poor quality of initial decision-making. currently, one in four decisions in asylum cases and almost one in three non-asylum cases are overturned at appeal, demonstrating the importance of a robust, impartial appeal process.

In-country appeal rights will be lost in instances where:

- the application is certified as ‘repetitious or unmeritorious’ or ‘clearly unfounded’
- the application is deemed to be ‘late’ (potentially affecting persons suffering mental trauma who are unable to make a full, frank disclosure at first instance)

The Bill expands the so-called ‘White List’ of countries to which the Home Office deems it to be ‘safe’ to return. Applications received from nationals of these countries are likely to be certified as ‘clearly unfounded’ with a consequent loss of an in-country appeal right. The expanded White List includes countries with documented poor human rights records. It also includes two countries which are not state parties to the 1951 Refugee Convention or 1967 Protocol. It is therefore arguable whether such countries can really be considered to be ‘safe’.

Furthermore, there is no appeal right for:

- foreign criminals
- persons who have breached a condition of their temporary leave
- the family members of the above (punishing children for the actions of their parents raises concerns under a. 2(2) UN Convention on the Rights of the Child)
- cases where the SSHD certifies that the decision relies on classified information

There is a clear argument that these proposals could engage a.6 ECHR – right to a fair trial and right to an effective remedy.

IMMIGRATION DETENTION AND BAIL

The SSHD considerably expands her own powers with respect to bail while curtailing the powers of the Asylum and Immigration Tribunal (AIT). For example, in some circumstances, the AIT can only award bail if the SSHD gives her consent. This arguably violates constitutional arrangements by limiting the independent powers of the judiciary.

The draft Bill provides for the immigration detention of persons whose removal is known not to be imminent, and indeed, where there is no prospect of removal. Indefinite detention may invoke a. 5 ECHR - the right to liberty and security – and would flout long-standing principles relating to the unlawfulness of indefinite detention established by UK courts.

PROBATIONARY CITIZENSHIP

The Bill proposes to introduce a new category of ‘probationary citizenship’. The term ‘citizenship’ is misleading as this status will not carry with it the legal entitlements of full citizenship. The introduction of an additional stage into the immigration system is not conducive to the aim of promoting integration. Regrettably, there are no measures to expedite the naturalisation process for refugees or stateless persons.

CONCLUSION

The draft Bill aims to simplify legislation by using plain language. Subsequently, technical terms (eg entry clearance, visas, leave to enter, leave to remain and temporary admission) are replaced by simplified terms (eg immigration permission), which fail to accurately reflect the original terms. This could give rise to lack of clarity and error.

If implemented, the draft Bill will usher in a regime of unprecedented harshness and insecurity for immigrants and may erode long-established legal principles and civil liberties. This Bill fails to reflect the values underscoring international human rights standards. The Law Centre has submitted evidence to the Joint Committee on Human Rights to draw attention to the Bill’s deficiencies in this regard. The Law Centre will monitor the progress of this draft Bill through Parliament.

For more information on any of these issues, or to receive a copy of our full response to the Joint Committee on Human Rights’ call for evidence, please contact the Policy Unit at Law Centre (NI) or go to www.lawcentre. org/Policy/policy.htm

 NOTES

1. In 2007, 2075 applicants were awarded discretionary leave, equivalent to 36.12% of all grants of permission. Home Office data.
2. We hope the draft Bill will now be updated to reflect the UK’s ratification of the Convention on Action against Trafficking in Human Beings (CETS No. 197).
3. e.g. Khadir [2005] UKHL 39.
Belfast
Migrant Workers: Social Security Rights……………….. 12 and 13 January 2009
Welfare Rights Adviser Programme (8 days) … 20 January – 10 March 2009
Tax Credits Update……………………………………… 29 January 2009
Carers and their Rights ........................................... 18 February 2009
Migrant Workers: Employment Rights …………………… 26 February 2009
Social Services Duties to People from Abroad …………… 12 March 2009
Current Trends in Judicial Review .......................... 19 March 2009
Introduction to Employment Law ……………………….. 24 March 2009

Derry
Carers and their Rights ........................................... 5 February 2009
Migrant Workers: Employment Rights ........................ 19 February 2009
Social Services duties to People from Abroad .............. 18 March 2009

For more details visit www.lawcentreni.org
or ring Law Centre (NI) 028 9024 4401.

Employment Lawyers' Group (NI)

Hon Sec: Anne McKernan, Equality Commission, Equality House, Shaftesbury Square, Belfast
Chairperson: Mary Lewis BL
Hon. Treasurer: Orlagh O’Neill, Napier & Sons, Solicitors, 1/9 Castle Arcade, Belfast, BT1 5DF

LUNCHTIME SEMINAR

A Dutch auction of employee rights:
The Posted Workers’ Directive, social dumping and the ECJ

Speaker: Eamonn McArdle BL
Date: Friday 23 January 2009
Time: 12.30pm to 2.00pm – a light lunch will be served.
Venue: Inns of Court, Royal Courts of Justice, Belfast.
Cost: Members £5.00. Non-members £10.00

To book a place on the seminar please complete the reply sheet below and send to Napier & Sons Solicitors,
1-9 Castle Arcade, Belfast or fax a reply to 028 9033 0330

BOOKING FORM LUNCHTIME SEMINAR

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Cheques should be made payable to ELG(NI). The seminar will attract one CPD hour.
Youth Court update

Practitioners are reminded of the facility offered through Bail Support at the Youth Court in Belfast. As members will be aware, there is a general presumption in favour of bail and statute strengthens that presumption in matters concerning young people. However, many children who come before the Youth Court have troubled backgrounds which mean that bail addresses can be hard to come by. However, there is assistance available through Bail Support and many solicitors have been able to secure help from that source since its inception.

It has become apparent that the facility has been used less frequently recently - possibly as a result of practitioners forgetting that it exists. The message has got to be “use it or lose it” - so, in appropriate cases, solicitors are encouraged to seek the appropriate advice.

In the Youth Court there has been a worrying trend for clients not to be present for hearings on the basis that they have been misinformed by legal representatives of their next date for hearing. Clearly, we do not want to be in a position where warrants are issued for failure to appear due to a mix up in dates and it is therefore essential that clients are advised of their next appearance both at court and by letter thereafter.

As members will be aware, in the adult courts, there is now an expectation that solicitors will have recorded a mobile telephone number for their client to enable them to be contacted at short notice. A similar practice would be advisable for Youth Court clients and perhaps one could expect that the younger clients are more likely to have their phones turned on!

On a similar topic, practitioners in the adult courts in Belfast will be aware that members of the Bench are tackling the failure of clients to turn up for Probation appointments with increasing vigour. The excuse that Probation wrote to the wrong address is much less readily accepted. Frequently, the address is now checked directly by the District Judge when the reports are ordered. Solicitors should ensure that clients supply an up to date address to Probation and that they understand their responsibility to advise PBN directly upon any change to that address pending completion of the Reports.

Belfast Solicitors’ Association frequently represents members’ interests to Court Service and would welcome the views of any members on any of the above matters or in relation to any areas of concern to the membership. If you wish to bring any issues to the fore, please contact us at info@belfast-solicitors-association.org

BSA recommended closed days 2009

Thursday 1 January
Tuesday 17 March
Friday 10 Monday 13 & Tuesday 14 April
Monday 4 May
Monday 25 May
Monday 13 and Tuesday 14 July
Monday 31 August
Thursday 24 Friday & Monday 28 December
(Friday 1 January 2010)
The annual BSA Dinner Dance will now be held on

Saturday 31 January 2009 at the Europa Hotel, Belfast.

The pre-dinner Drinks Reception commences at 7.30pm
Followed by dinner at 8.30pm with music provided by The Booze Brothers

Tickets £45.00 per person

A donation from every ticket sold will be made to the Solicitors Benevolent Association. As there is always high demand for places, members are recommended to book as early as possible to avoid disappointment.

The Europa Hotel is offering a preferential rate of £50 per person sharing a twin or double room including breakfast. Room reservations should be made direct with the hotel on 9027 1066, requesting the preferential rate for the BSA Dinner Dance.

We look forward to seeing you there!

Bookings must be made in writing and addressed to:
The BSA Administrator, Suite 7, 58 Howard Street Belfast BT1 6PL

A booking form can be found on our website
www.belfast-solicitors-association.org
Any enquires should be made by e-mail to:
info@belfast-solicitors-association.org

A reservation cannot be made unless a cheque (made payable to Belfast Solicitors Association) is received with the booking request. Confirmation of booking will be sent out in writing. Tables are for 10 people and any requests for vegetarian meals should be made at the time of booking.
Children In Need

Pudsy visits the Institute of Professional Legal Studies.

The trainees and staff held a coffee morning to raise money for Children In Need.

Feeling the Pinch?

Many lawyers are struggling, and suffering the effects of the credit crunch just as much as their clients.

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Health Support and Advice for Lawyers
High Court and Court of Appeal Decisions

**ADMINISTRATION OF JUSTICE**

**ALI v BELFAST HEALTH AND SOCIAL CARE TRUST**

Domestic disciplinary proceedings in an employment context. - Plaintiff is a consultant surgeon in the employ of the defendant and is subject to disciplinary charges relating to the keeping of operation records. – whether the plaintiff is entitled to legal representation of a certain kind. – application of the Departmental Framework Code on Directions on Disciplinary Procedures. – whether the disciplinary process is, as a whole, compatible with the Plaintiff’s common law right to a fair hearing and his contractual rights. – Held that the plaintiff is entitled to be accompanied by a legally qualified person of his choosing as a matter of contractual right, and that the Trust’s refusal to permit the plaintiff to be accompanied at the forthcoming disciplinary hearing is in breach of his contract of employment and declaratory relief made accordingly

**HIGH COURT**
**12 NOVEMBER 2008**
**MCCLOSKEY J**

**AGRICULTURE**

**AN APPLICATION FOR FINRONE LIMITED FOR JUDICIAL REVIEW**

Application for judicial review of a decision of the Department of Agriculture and Rural Development in relation to the administration of the Farm Nutrient Management Scheme in relation to the payment of grants for the installation of slurry tanks. – whether the maximum grant was fixed by reference to the cost of a tank being supplied by one of the main competitors of the applicant. – whether the applicant’s company was disadvantaged in the administration of the grant scheme because insufficient recognition was given to the exceptional quality of his product. – assessment of value for money in the installation of the tanks. – Held that a declaration be made that there was a shortcoming in the Department’s approach in relation to value for money, that it will reassess costs tables to reflect the value for money issue and apply the outcome to the payment of grants up to December 2008

**HIGH COURT**
**20 OCTOBER 2008**
**WEATHERUP J**

**CRIMINAL LAW**

**ANTHONY MONTGOMERY v GOVERNOR OF HER MAJESTY’S PRISON MAGHABERRY**

Application for a writ of habeas corpus ad subciendum and judicial review seeking the immediate release of the applicant from HMP Maghaberry and an order of certiorari to bring up and quash a decision of the Northern Ireland Prison Service (NIPS) that the applicant’s date of release should have been earlier. – whether the NIPS erred in law in the calculation of the applicant’s date for release. – whether the applicant’s time spent on remand following a breach of a probation order should be included in time served. – applicant sentenced on different dates to sentences which were neither consecutive or concurrent. – Held that the applicant was held on remand in connection with the complaint that he was in breach of probation and was entitled to have his sentence on that complaint reduced by the entire amount that he was on remand on foot of the complaint, and that he be released immediately

**HIGH COURT**
**12 NOVEMBER 2008**
**HIGGINS LJ, GIRVAN LJ**

**DAMAGES**

**SEAN FRYERS v BELFAST HEALTH AND SOCIAL CARE TRUST**

Civil bill appeal against a dismissal of a claim in tort brought by the plaintiff against his employer. – plaintiff was in a ward bedside a hygiene operative at the Royal Victoria Hospital who sustained a needle stick injury from a used injection needle which was protruding from a bag of clinical waste being handled by him. – claim for damages for personal injury, loss and damage by reason of the negligence and breach of statutory duty of the defendant. – whether the plaintiff’s physical injury constituted actionable damage in tort, and if so, whether his psychiatric symptoms were likewise actionable in tort. – duty of care of defendant to employee. – foreseeability of psychiatric injury. – whether the plaintiff has an actionable claim in contract so he can recover damages for the injuries suffered. - Held that the county court judge was correct in dismissing the plaintiff’s claim in tort, and that the defendant owed the plaintiff a contractual duty commensurate with its tortuous duty, and that the damages in this instance of £3000 be awarded

**HIGH COURT**
**30 OCTOBER 2008**
**GILEN J**

**DISABILITY DISCRIMINATION**

**WILLIAM MACK v CRF DEVELOPMENTS LIMITED**

Plaintiff a prospective purchaser of a ground floor apartment who was disabled and required modifications to the apartment and extra width carparking space. – negotiations for a larger parking space were unsuccessful. – whether the plaintiff was subject to disability discrimination in that there was a failure to make reasonable adjustments in relation to the provision of goods, facilities and services contrary to the Disability Discrimination Act. – whether the defendants were in breach of a contractual or pre-contractual agreement namely assurances given about the provision of a suitable parking space. – Held that the plaintiff has not been the subject to unlawful discrimination as a result of his disability and had not been treated less favourably
High Court and Court of Appeal Decisions

EMPLOYMENT

JAMES ROBERT PEIFER v CASTLEDERG HIGH SCHOOL AND WESTERN EDUCATION AND LIBRARY BOARD
Application for Order compelling the Industrial Tribunal to state a case for the opinion of the Court of Appeal. – applicant submitted a claim to the Tribunal stating that he had been the subject of direct and indirect sex discrimination as a consequence of the failure by ten different schools to appoint him as a classroom assistant. – Tribunal dismissed his claim and refused his application for costs. – the applicant’s job application form for the school was unsigned and undated, and therefore dismissed due to established unwritten policy. – HELD that no question of law in respect of which the Tribunal would have jurisdiction that ought to be considered by the Court could be found, and application dismissed

COURT OF APPEAL
30 OCTOBER 2008
HIGGINS LJ, GIRVAN LJ, COGHLIN LJ

JUDICIAL REVIEW

AN APPLICATION FOR JUDICIAL REVIEW BY JR1 BY HER MOTHER AND NEXT FRIEND
Interim relief application. – deployment of taser guns. – whether the Chief Constable erred in introducing tasers for use in circumstances where it had not been established that their use was required as a matter of necessity as an alternative to the use of firearms by police officers. – whether a comprehensive review of the data concerning potentially fatal consequences had been carried out. – whether in breach of ECHR, an obligation to have due regard to the interests protected by s.75 Northern Ireland Act. – whether arguable case for granting a judicial review. – HELD that the application for interim relief be refused

HIGH COURT
31 OCTOBER 2008
MORGAN J

LIMITATION OF ACTIONS

DARREN FALLIS v DEREK ELLIOTT
Preliminary issue to determine whether the plaintiff’s cause of action is barred by virtue of the provisions of the Limitation (NI) Order 1989. – loss and damage sustained by the plaintiff by reason of breach of contract and negligence of the defendant in and about the provision of architectural services in relation to the design and specifications for the premises and in and about the supervision and certification of the works at the premises. – plaintiff had engaged the services of the defendant, an architect, in the construction of a house. – cracks developed in the house which caused the defendant to move out two years after completion. – structural engineers confirmed the cracks were as a result of inadequate substructure. – whether the plaintiff could with reasonable diligence have discovered that the defendant had deliberately concealed facts from him. – HELD that the defendant’s application be dismissed and that the plaintiff had discharged the burden on the balance of probabilities of showing that the defendant was aware of facts relevant to the plaintiff’s cause of action and has deliberately concealed them from him, and that the plaintiff’s cause of action is not statute barred

HIGH COURT
24 OCTOBER 2008
GILLEN J

APOLOGY

Gary McIlveen
The October/November 2008 issue of The Writ included a short report of a judicial review application by Mr Gary McIlveen. It was stated in our report that Mr McIlveen had pleaded guilty to a charge of blackmail.

In fact Mr McIlveen was acquitted by the Jury of the offence of blackmail. Mr McIlveen’s solicitor has drawn our attention to this unfortunate error, which we completely accept and The Writ offers its sincere apologies to Mr McIlveen for the upset and embarrassment caused to him.
Library Update

Christmas parties

> Articles

Employers' liability
Have fun, but be sure to tow the party line: Nick Humphreys on how the law could dampen the spirits of employers and staff this Christmas. Outlines some of the legal dangers of the office Christmas party, including employers' liability for health and safety and potential disciplinary procedures. Humphreys: 2003 Times, December 9, Law 4

Altercation and assault: office party
Discusses Graham v Portroe Stevedores Ltd (unreported) on whether a manager, who was accused of having verbally and physically assaulted a colleague at a company Christmas party, had been unfairly dismissed. Turner: 2008 J.E.L.J. 5(2), 72

Preventing and dealing with harassment at the NI Social Security Agency
Northern Ireland Social Security Agency’s (SSA) zero tolerance policy to prevent harassment and bullying in the workplace. Discusses an industrial tribunal case, A v B (unreported) which ruled that the SSA was not liable for the alleged sexual harassment of a female employee by a male employee at a Christmas party. 2004 IDS D.W., 2(Aug), 8-14

Sex discrimination: dismissed following harassment complaint
Reports on the decision in Tiberio v Balfour Beatty Utilities Ltd (unreported). Whether verbal abuse of a female employee by a manager at a company Christmas party amounted to harassment under the Sex Discrimination Act 1975 s.4A. 2007 IDS D.W., 37(Jul), 19-20

Erinaceous boss insulted Muslim
Reports on the ruling in Egdideswy v Hanover Park Commercial Ltd (unreported). Whether a senior manager had suffered religious discrimination and victimisation when a chief executive confronted her in front of colleagues at a Christmas party about her decision to convert to Islam. Cahill: 2006, EG 0646, 37

Unfair dismissal: “promise” made at Christmas party not contractual
Comments on the Judge v Crown Leisure Ltd case on whether an employer’s alleged promise to an employee, made at a Christmas party, that his salary would be increased amounted to a contractual commitment. 2005: IDS Emp. L. Brief, 792, 7-8

> Employee Benefits

Brown adds to Christmas party fun
Tax exemption for employers doubled to £150 for an office Christmas party as a reward for companies that provide perks to their employees. Peek: 2003 Times, April 11, 17

Judge v Crown Leisure Ltd
Whether a promise made by an employer to an employee at a social event, in relation to the equalisation of salaries, amounted to a legally binding commitment. – whether failure to fulfill that commitment amounted to constructive dismissal. [2005] EWCA Civ 571; [2005] I.R.L.R. 823

Chief Constable of Lincolnshire v Stubbs
Stubbs complained that a fellow officer, W, had sexually harassed her during social events which were connected with work. – Tribunal ruled that liability exists when parties are held offsite and outside working hours. – executives have a duty if they have taken reasonable steps to prevent harassment and are advised to control the flow of alcohol, designate a personal responsible for monitoring events and remind staff that disciplinary rules continue to apply during a party. [1999] I.C.R. 547; [1999] I.R.L.R. 81

Noreen Hunter v Department for Regional Development for Northern Ireland
Plaintiff sustained fracture to her right wrist as a result of a prank carried out by a colleague during the office staff Christmas party which was being held at a hotel. - the plaintiff had organised the party and all staff attended voluntarily and paid their share of the cost, none of the cost being borne by the defendant. - the function was held outside working hours in public function rooms. - whether the defendant is vicariously liable for the wrongful acts and negligence of an employee in these circumstances. - distinction between social functions on official premises and those held outside official premises. - HELD that the prank was an independent act and not so closely associated with the perpetrator’s employment as to make it fair and just to hold the defendant vicariously liable 5 September 2008 [2008] NIQB 88

Available on Libero via www.lawsoc-ni.org

> Precedents

Company Policy on alcohol and drug abuse (refers specifically to social gatherings)
Encyclopaedia of Forms and Precedents Vol 17(2) 2005 Form 48
Policy on alcohol, drugs and other substances
Encyclopaedia of Forms and Precedents Vol 14(1A) 2005 Form 154

Both precedents are available from the Law Society Library.

> Websites

ACAS – Advisory Conciliation and Arbitration Service
Provides an independent and impartial service for organisations to prevent and resolve disputes and to build harmonious relationships at work.
www.acas.org.uk

Labour Relations Agency
The independent body responsible for assisting employers, employees and their representatives to improve the conduct of their industrial relations and employment.
http://www.lra.org.uk/

The Library has a wide selection of employment textbooks which are available for reference in the library.

NEW BOOKS IN THE LIBRARY

Brazell, L. Electronic signatures and identities law and regulation. 2nd ed. Sweet & Maxwell 2008


**Missing Wills**

1. **Hugh Sturgeon** (deceased)
   
   **Late of:** 14 Brae Road, Ballynahinch, County Down BT24 8HN
   
   Would any person having knowledge of the whereabouts of a Will for the above named deceased please contact:
   
   Brenda Niblock
   
   Elliot Duffy Garrett
   
   Solicitors
   
   Royston House
   
   34 Upper Queen Street
   
   BELFAST BT1 6FD
   
   **Tel:** 028 9024 5034
   
   **Fax:** 028 9024 1337
   
   **Email:** Brenda.niblock@edglegal.com
   
   **Ref:** BN/STUR2-1

2. **Margaret McNulty** (deceased)
   
   **Late of:** 37 Ladbrook Drive, Crumlin Road, Belfast BT11 9EZ and Bruce House Nursing Home, 6A Duncairn Avenue, Belfast BT14 6BP
   
   Would anyone having any knowledge of the whereabouts of any Will made by the above named deceased please contact:
   
   Paul McEvoj
   
   McEvoj Sheridan
   
   Solicitors
   
   344 Ormeau Road
   
   BELFAST BT7 2HL
   
   **Tel:** 028 9069 4444
   
   **Fax:** 028 9064 0777

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**Missing Title Deeds**

**Folio:** 9704

**County:** Antrim

**Registered Owner:** James Morrison

**Lands:** A plot of ground containing six acres and three perches or thereabouts statute measure situate in the Electoral Division of Seacon, Barony of Dunluce Upper and County of Antrim

**Notice:** Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

Pamela Reade
O’Rorke McDonald & Tweed Solicitors
37-39 Church Street
Antrim

**County Antrim BT41 4BD**

**Tel:** 028 9446 3108

**Fax:** 028 9446 3109

---

**Joan Isabel Murray** (deceased)

**Late of:** 1 Rochester Avenue, Belfast BT6 9JU

Would any Solicitor who is aware of a Will made by the above named deceased please contact:

Hinds & Small

Solicitors

Shields House

21 James Street South

BELFAST BT2 7GA

**Tel:** 028 9024 5353

**Fax:** 028 9024 7212

**Ref:** JPH/IA/H9.3

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**Michael O’Kane** (deceased)

**Late of:** Victoria Del Sol 2, Apto 412, CL Murillo Brach 29620, Torremolinos, Malaga, Spain

Sometimes of: 43 Derry Road, Newtownabbey, County Antrim BT36 7UF and 443 Antrim Road, Newtownabbey, County Antrim

**Date of Death:** 10 October 2008

Would any person having knowledge of a Will made by the above named please contact the undersigned as soon as possible.

Patrick Fahy & Co

Solicitors

4 John Street

Ormeagh

County Tyrone BT7 8RP

**Tel:** 028 8224 4028/028 8224 3447

**Fax:** 028 8224 5326

**Email:** patrick.fahy@pfahy.com

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**William Crawford Gore Moriarity** (deceased)

**Late of:** 1 Grantham Villas, Armagh City

Would any person having any knowledge of the Estate of or descendants of William Crawford Gore Moriarity please contact:

Peter H Jones & Co

Solicitors

Goff Street

Roscommon

County Roscommon

**Tel:** 00 353 9066 26925

**Fax:** 00 353 9066 25354
Folio: 18821
County: Fermanagh
Registered Owner: Alan McMahon
Registered Owner of Charge: Northern Rock plc
Property at: 72 Glenwood Gardens, Enniskillen, County Fermanagh BT74 7NA

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

John Quinn & Co
Solicitors
14 Belmore Street
Enniskillen
County Fermanagh BT74 6AA
Tel: 028 6632 6008
Fax: 028 6632 2592

Folio: 13938
County: Down
Registered Owner: Patrick Gerard Darby
Lands at: Drumronniff, Cabra, Newry, County Down

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

Emmet J Kelly & Co
Solicitors
Cameo House
41 Bridge Street
Banbridge
County Down BT32 3JL
Tel/fax: 028 4062 9397
Re: Joan Isabel Murray (deceased)
Late of: 1 Rochester Avenue, Belfast BT6 9JU

Would any Solicitor having knowledge of the whereabouts of Documents of Title relating to the above property please contact:

Hinds & Small
Solicitors
Shields House
21 James Street South
BELFAST BT2 7GA
Tel: 028 9024 5353
Fax: 028 9024 7212
Ref: JPH/V/A/H9.3

Folio: DN21041L
County: Down
Registered Owners: Richard Eugene McAlorum and Catherine McAlorum
Lands at: Apt 29, Roseville, Wandsworth Road, Bangor

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is so produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

MKB Russells
Solicitors
14/18 Great Victoria Street
BELFAST BT2 7BA

Folio: DN13437L
County: Down
Registered Owners: Thomas Stewart and Mary Josephine Stewart
Lands at: 1 Taughrane Heights, Dollingstown, County Down

Take notice that any person having custody of or information as to the whereabouts of the Land Certificate relating to the above mentioned Folio should forthwith produce said Certificate or communicate such information to the under mentioned Solicitors. And take further notice that unless the said Land Certificate is produced or adequate information as to its whereabouts is so communicated within three weeks of publication of this notice a duplicate Land Certificate may be applied for.

John Boston & Company
Solicitors
565 Upper Newtownards Road
BELFAST BT4 3LP
Tel: 028 9048 0460
Fax: 028 9048 9563
PROPERTY (NORTHERN IRELAND) ORDER 1978
IN THE LANDS TRIBUNAL FOR NORTHERN IRELAND

TAKE NOTICE that H & J Martin Limited having its Registered Office at 163 Ormeau Road Belfast the owner and occupier of the premises situate at and known as 179-181 Beensbridge Road, Belfast by its Solicitors McKinty & Wright intends to make an application to the Lands Tribunal for Northern Ireland pursuant to Article 5 of the Property (Northern Ireland) Order 1978, for a restrictive covenant affecting the subject premises to be extinguished or alternatively modified in such respects as might be necessary so as to permit the erection of further buildings and to permit such buildings to be used as dwelling houses, apartments or for such other commercial use as may be permitted by any valid Planning Permission.

The restrictions are contained in a Fee Farm Grant dated 30 August 1919 and made between Dolway Bell Walkington and Samuel Britten Walkington of the one part and Samuel Barr of the other part and a Conveyance dated 31st July 1947 and made between Robert A Johnston of the one part and Creighton Henry of the other part of the other part.

In some circumstances, the Tribunal has a discretion to award compensation for the loss of the benefit of a covenant. Persons who wish to object to this application or claim compensation may do so by serving notice in writing upon the Registrar of the Lands Tribunal for Northern Ireland, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JJ, on or before 31 December 2008 together with details of

-- how their claim to be entitled to the benefit of the covenant arises, and

-- their grounds of objection (if any)

-- how any claim for compensation (if any) arises.

Dated the 17 October 2008

McKinty & Wright
Solicitors
5/7 Upper Queen Street
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